S. Hrg. 100-879

IMPROVEMENT OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2250

TO ENSURE THAT FEDERAL LANDS ARE MANAGED IN A MANNER THAT DOES NOT IMPAIR THE EXERCISE OF TRADITIONAL AMERICAN INDIAN RELIGION

MAY 18, 1988
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
89-810 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S411-4

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IMPROVEMENT OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

WEDNESDAY, MAY 18, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:00 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, McCain, DeConcini, and Murkowski.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The hearing will please come to order. This morning we take up the amendments to the American Indian Religious Freedom Act.

When Congress passed the American Indian Religious Freedom Act in 1978, it set forth a policy that the United States Government would protect and preserve the right of American Indians, Eskimos, Aleuts, and native Hawaiians to express and exercise their traditional religions. Pursuant to this policy, Federal agencies are required by law to restrict the customs, ceremonies and traditions of native American religions.

When the American Indian Religious Freedom Act was passed it included a requirement that a Federal Agencies Task Force be established to report to Congress within the year on recommendations for policy changes which would appropriately implement the act. The requirement for this report was included in the act in recognition of the need to specifically identify where Federal practices may conflict with native religious practices and how they may be effectively protected.

Although the task force wrote a report and made recommendations, no further action was ever taken. In the meantime, a number of court cases have emerged involving the rights of native Americans to engage in traditional practices. Recently, the Supreme Court issued a decision on a case in Northern California that concluded that while the construction of a road through tribal burial sites "could have devastating effects on traditional Indian religious practices, the First Amendment must apply to all citizens alike and can give none a veto over public programs that do not prohibit the free exercise of religion."

This decision could undermine the ability of traditional cultures in our land to exercise essential practices. It is now appropriate that Congress revisit the American Indian Religious Freedom Act.

[Text of S. 2250 follows:]

II

100TH CONGRESS
2D SESSION

S. 2250

To ensure that Federal lands are managed in a manner that does not impair the exercise of traditional American Indian religion.

IN THE SENATE OF THE UNITED STATES

MARCH 31, 1988

Mr. CRANSTON (for himself, Mr. INOUYE, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To ensure that Federal lands are managed in a manner that does not impair the exercise of traditional American Indian religion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 95-341 is amended by adding at the end thereof the following new section:

"SEC. 3. (a) Except in cases involving compelling governmental interests of the highest order, Federal lands that have been historically indispensable to a traditional America Indian religion shall not be managed in a manner that would seriously impair or interfere with the exercise or practice of such traditional American Indian religion.

"(b) United States district courts shall have the authority to issue such orders as may be necessary to enforce the provisions of this section.".

The CHAIRMAN. This morning we will hear from a number of witnesses who each bring a different perspective to how this act has been implemented and what may be done to improve it.

Our first witness this morning will be the Deputy Director of the Bureau of Land Management, Department of the Interior, Mr. Roland Robison. Mr. Robison, welcome, sir.

STATEMENT OF ROLAND ROBISON, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. ROBISON. Thank you, Mr. Chairman. I appreciate the opportunity to appear before the committee today to discuss the views of the Department of the Interior on S. 2250.

It would amend Public Law 95-341, the Joint Resolution on American Indian Religious Freedom, by adding a new section 3 to provide that, except in cases involving compelling governmental interests of the highest order, Federal lands which have been historically indispensable to a traditional American Indian tradition shall not be managed in a manner that would seriously impair or interfere with the exercise or practice of such traditional American Indian religion. Section 3(b) would give United States District Courts jurisdiction to enforce the provision.

Although we are appreciative of the rights of American Indians to exercise their religion, we strongly oppose enactment of S. 2250.

Section 2 of the American Indian Religious Act required the President to direct the various Federal departments, agencies and other instrumentalities responsible for administering relevant laws, to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve native American religious cultural rights and practices. We believe that Federal agencies are respecting the intent of the American Indian Religious Freedom Act.

For instance, BLM's regulations require coordination with and meaningful involvement of Indian tribes in the development of resource management plans. Indian tribes are given opportunities to review plans, are notified of intentions to amend plans and suggest topics and issues.

BLM assures that its programs are consistent with programs of Indian tribes as long as they remain consistent with Federal laws and regulations.

The provision that S. 2250 would add to the American Indian Religious Freedom Act would impose very strict limitations on the exercise of Federal agency mandates and goes far beyond what is required by section 2 of the American Indian Religious Freedom Act. In addition, it is questionable that it would accomplish what we believe is its purpose.

The wording of section 3(a) is vague and unworkable. Specifically, terms such as "compelling governmental interests of the highest order," "historically indispensable," and "seriously impair or interfere with," are subject to a great variety of interpretations. There are no finite standards on which to weigh land management decisions against American Indian religious exercises, nor is there any indication of where these religious sites are located. We cannot even estimate how much Federal land would be subject to the requirements of this bill.

We object to the provision that it authorizes bypassing administrative process and remedies, and allows a case to be taken to the Federal District Courts directly. It provides no possibility of resolution of an issue without the necessity for court action. In addition, as the provision is written, it would seem to give no avenue of relief to persons who may object to the manner in which the provision is proposed to be enforced.

If S. 2250 is enacted, it would severely curtail the ability of the various land management agencies to carry out the Congressional mandates under which they operate. The basic premise of the bill appears to be that religious use of Federal lands should be the primary use of those lands. Furthermore, the only exception to the bill—cases involving compelling governmental interests of the highest order—would seem to apply only to activities relating to the national defense of the United States.

Recently the Supreme Court, in the case of *Lyng, Secretary of Agriculture, et al.* v. *Northwest Indians Cemetery Protective Assn., et al.,* held that the American Indian Religious Act does not create any legal rights that can be enforced against Federal agencies. That case related to the construction of a paved road through Federal land, including the Chimney Rock area of the Six Rivers National Forest, which was used by certain American Indians for religious rituals that depend upon privacy, silence, and an undisturbed natural setting.

In its decision, the court said, "Whatever rights the Indians may have to the use of the area, however, those rights do not divest the government of its right to use what is, after all, its land."

In summary, S. 2250, in our judgment is vague and unclear and may go far beyond the issue it is intended to address. We, therefore, strongly oppose it.

This concludes my statement, Mr. Chairman. I will be pleased to answer any questions that you may have.

[Prepared statement of Mr. Robison appears in appendix:]

The CHAIRMAN. Mr. Robison, I gather this is the official position of the administration?

Mr. ROBISON. It is.

The CHAIRMAN. So you are speaking for the Bureau of Indian Affairs also?

Mr. ROBISON. I am speaking for the Department of the Interior and that includes the BIA. Yes, sir.

The CHAIRMAN. Do you know whether the BIA has anyone who is knowledgeable regarding Indian religion and the significance of these religious sites?

Mr. ROBISON. I personally do not know that, Senator. I assume there is someone who has that capacity and background, but I do not know it.

The CHAIRMAN. You have indicated that regulations of your bureau require that you coordinate with and involve in a meaningful manner Indian tribes in the development of your plans. How do you carry out this coordination?

Mr. ROBISON. The entire BLM management of public lands is bottomed, Senator, on the development of land use plans and the involvement of the public in the development of those plans and in the administration of those plans.

We involve Indian tribes. We involve County Commissions, State and local Government, the public in general, environmental groups, what have you, through public notice and, in the case of Indian tribes where they are in close proximity and are affected by direct contact, by visiting with them personally, by providing them with letters indicating hearings will be held, bringing to their attention proposed plans and asking for them to comment on them, that kind of thing.

The CHAIRMAN. Once your plans are made, no matter what they say, you will go through with it?

Mr. ROBISON. I suppose in any given operation there comes a time when the finality has to occur, but there is no BLM plan of which I am aware which cannot be altered through an appropriate administrative process if it can be demonstrated that there is a need for such alteration.

The CHAIRMAN. How do you think this measure will severely curtail the ability of the various Government agencies to carry out Congressional mandates under which they operate in a bureau such as yours?

Mr. ROBISON. Actually, Senator, we are very much concerned because as a multiple use agency we have responsibility for managing the 270 million acres under our care for many purposes: Mineral development, livestock grazing, recreation, fish and wildlife purposes, watershed protection, archeological protection and those kinds of things.

It would appear to us that the way this bill is structured, it would mean that all of those other uses are subservient, if you will, to the primary Indian religious considerations. We would think that in any endeavor that we undertook to operate on a multiple use basis, that we would have to pay deference first to Indian religious concerns which, as far as we are concerned, are rather ill defined, pervasive and sometimes secretive.

The CHAIRMAN. Do you believe that there exists at this time a special trust relationship between the Government of the United States and the sovereign entities of tribes and Nations?

Mr. ROBISON. I think, without any question, there is a trust relationship, Senator. Yes.

The CHAIRMAN. Do you believe that as part of this trust relationship, the Government of the United States should take every step possible to protect the religious practices of these people who depend upon this trust relationship?

Mr. ROBISON. I think, Senator, it should take every proper and reasonable step. Whether it should take every step possible is a question that I am not prepared to give an affirmative answer to.

The CHAIRMAN. Have we ever, in the management of our resources, violated burial grounds of other religious groups?

Mr. ROBISON. I would suppose that to be the case. I have no personal knowledge of it, but I would imagine that in the historical past, that has occurred. Yes.

The CHAIRMAN. I suppose your opposition is such that you are not prepared to even submit your recommendation as to how this measure should read.

Mr. ROBISON. I wouldn't go that far, Senator. We would be willing to meet with you, or staff members whom you might designate, to consider ways and means whereby this particular concern could be better addressed; we would always be willing to do that.

The CHAIRMAN. I would assume that if this measure becomes enacted into law, that you would be ready and willing to make certain that every provision is carried out.

Mr. ROBISON. We always attempt to comply with the provisions of the law, Senator.

The CHAIRMAN. I am certain we can depend upon you, sir.

Mr. ROBISON. You can, sir. Yes.

The CHAIRMAN. I thank you very much.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I have no questions.

We are addressing a terribly difficult issue here. I appreciate the willingness of the Chairman to take this issue on. Of course, we want to preserve the culture and heritage and religious freedom of every American, including our native Americans.

In Arizona, as you know Mr. Chairman, we have many burial grounds and areas of cultural and historical interest, in fact, historical and cultural critical aspects as far as our native Americans are concerned. We try to make every effort to preserve those. We have the continuing problem of the desecration of Indian burial grounds, historic areas and others; because of the size of our State, it is almost impossible to prevent that.

At the same time, obviously, we have got to consider the needs and requirements of all of our citizens. I hope that we will be able to balance this legislation in this fashion.

I appreciate the testimony of the witness and his willingness to work with us in achieving that goal.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, sir.

Senator MCCAIN. Thank you, sir.

The CHAIRMAN. Our next witness is the author of the measure S. 2250, the distinguished senior Senator of the State of California, the Honorable Alan Cranston.

I would like to note, with great pleasure that I am a cosponsor of your measure, sir.

STATEMENT OF HON. ALAN CRANSTON, U.S. SENATOR FROM CALIFORNIA

Senator CRANSTON. I am grateful for the opportunity to speak today in support of S. 2250, a proposed amendment to the American Indian Religious Freedom Act which I introduced on March 31, 1988. I deeply appreciate the Chairman's swift action in scheduling this hearing today. Moreover, I am grateful to you, Senator Inouye, for joining as an original cosponsor of S. 2250.

S. 2250 proposes to strengthen the American Indian Religious Freedom Act by requiring Federal agencies to manage Federal lands in a manner that does not seriously impair or interfere with the exercise or practice of traditional American Indian religion. It would further provide United States district courts with the authority to issue such orders as may be necessary to enforce this requirement.

Ten years ago, Congress enacted the American Indian Religious Freedom Act which sets forth the policy of the United States to protect and preserve for American Indians, Eskimo, Aleut, and native Hawaiians, their inherent right of freedom to believe, express and exercise their traditional religions.

Pursuant to its provisions, Federal agencies are required by law to respect the customs, ceremonies and traditions of native American religions. The act also provided that within one year of enactment, Federal agencies would be required to examine their policies and procedures and work with native traditional and tribal leaders to assure minimal interference with the religious practices of Indian people.

In August of 1979, the Federal Agencies Task Force charged with this responsibility submitted its report to Congress. That report concluded that due to ignorance and attitudes, Federal policies and practices were directly or indirectly hostile toward native traditional religions, or simply indifferent to their religious values.

The report found that native American people were denied access to sacred sites on Federal land for the purpose of worship and, in cases where they did gain access, they were often disturbed during their worship by Federal officials and the public. In addition, some sacred sites were needlessly put to other uses which desecrated them.

Although the various recommendations regarding legislative action went through a review process under the Carter Administration, no action was taken to remove barriers to Indian religious freedom identified in the 1979 report.

In 1982, oversight hearings conducted by my fellow Californian, Representative Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, revealed that abuses of the religious freedom rights of native Americans continue despite the policy delineated in the American Indian Religious Freedom Act.

Ten years have passed since passage of the American Indian Religious Freedom Act. Yet, Federal land management policies remain insensitive to Indian religions and cultural traditions, and American Indians lack a mechanism to enforce their rights to religious freedom.

Congress must take affirmative steps to halt the increasing infringement on the religious prerogatives of American Indians. I believe it is imperative that we establish a clear standard of review to guide the courts in interpreting the purpose and policies of the American Indian Religious Freedom Act.

S. 2250 would provide this much needed standard of review. It would make the rights of practitioners of traditional American Indian religions under the American Indian Religious Freedom Act enforceable in court.

Ten years ago, Congress made a commitment to protect the rights of American Indians to practice their traditional religion. We must make sure those rights are a reality.

I look forward to working with you, Mr. Chairman, and with the other members of this committee, and other interested parties to ensure that the rights of Indian people to practice their traditional religion without the interference of Governmental agencies—rights taken for granted by most other Americans—are adequately protected.

Mr. Chairman, I thank you for your support of S. 2250 and for your commitment to work toward its passage.

[Prepared statement of Senator Cranston appears in appendix.]

The CHAIRMAN. I thank you very much, Senator Cranston.

There is a special relationship between our Government and Indian tribes, a relationship that is often described as a trust relationship.

Do you believe that, as part of this trust relationship we, as a Nation, should be obligated to make certain that those who rely upon this relationship can feel secure that their religious rights are protected?

Senator CRANSTON. I most certainly do.

The CHAIRMAN. I thank you very much, sir.

Senator CRANSTON. Thank you very much.

The CHAIRMAN. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. No questions.

Thank you, Senator.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I do not have any questions of the distinguished Senator from California. I do want to commend him for his leadership in this area which is very important to native Americans in recognition of their rights and freedoms to practice their religion on lands managed by the Federal Government.

Like anything else, the ability of a community of people to live together depends on the intent with which they mutually accommodate each other. I think the Senator's bill here can be crafted in such a way for that mutual accommodation. When this does not happen on its own, then there is a very difficult task which someone must assume to bring the parties together to find a way to achieve. What we all want here, I think, is mutual accommodation.

In this case that someone, of course, is Senator Cranston. I am committed to working with him and you, Mr. Chairman, on finding this accommodation in the non-Indian community and the Federal lands.

I will ask unanimous consent that the balance of my statement appear in the record. I have no questions, Mr. Chairman.

[Prepared statement of Senator DeConcini appears in appendix.]

The CHAIRMAN. Without objection, so ordered. Once again Senator, thank you very much.

Senator CRANSTON. Thank you very much. I appreciate this positive reception and response. I feel we're off to a good start. Thank you.

The CHAIRMAN. Thank you.

Our first panel this morning will consist of the following: The Executive Director of the National Congress of American Indians, Ms. Suzan Harjo; the Executive Director of the Bureau of Catholic Indian Missions, Monsignor Paul E. Lenz; Native American Rights

Fund, Mr. Steve Moore, Esquire; and a Professor of Anthropology at the University of Colorado, Dr. Deward E. Walker, Jr.

Shall I call upon the Monsignor first? Welcome, sir.

STATEMENT OF MONSIGNOR PAUL A. LENZ, EXECUTIVE DIRECTOR, BUREAU OF CATHOLIC INDIAN MISSIONS, WASHINGTON, DC

Monsignor LENZ. Thank you Senator. Good morning.

My name is Monsignor Paul Lenz, Executive Director of the Bureau of Catholic Indian Missions located here in Washington, D.C. Father Ted Zuern, S. J., pastor of St. Issac Joques Parish and the Mother Butler Center, Rapid City, South Dakota, is the Associate Director of the bureau of Catholic Indian Missions for legislation. This statement has been researched by him. I want to make it clear at the outset that we support S. 2250, which was introduced by Senator Cranston.

S. 2250 is an amendment to the 1978 American Indian Religious Freedom Act. It ensures that Federal lands are managed in a manner that does not impair the exercise of traditional American Indian religions. It specifically places all Federal property under mandate to be managed in a way that does not impair a traditional American Indian religion exercise in areas that have been historically indispensible to rituals and rites.

To many Americans, knowledge of any religion outside the bounds of the Judeo-Christian tradition or the Moslem tradition is minimal at best. It is not taken seriously. It is never given the respect that it deserves. It is something that people follow for lack of anything else to believe.

We must always realize that the American Indians were a very spiritual people, probably more spiritual than we are today. In our age, we have so many benefits of science to provide conveniences for us that we do not realize how ultimately we are dependent on the basic provisions that God gives to us in this life.

The American Indians of this country achieved remarkable heights of development in some few instances, but for the most part lived lives close to the elements and with little conveniences. They lived a life close to God, or the Great Spirit, or the Great Mystery, as they called him in their own tongues.

The American Indians were a people of prayer. They allowed most of the actions of their lives to be blessed by the utterance of a prayer to the Great Creator of all things. They lived a life that interjected prayer into so many of their actions.

Unlike Christians or Jews or Moslems, they did not need a church or synagogue or mosque for their prayers. They had the whole realm of God's creation. They worshipped outdoors. They were close to their Creator. They were surrounded by the gifts that he gave them.

They were liturgists. Their sense of appropriate actions united with song of all nations and stillness of silence or with the spoken word, were part of the worship they gave to the Great Spirit.

They included dance in their worship; it was a very prominent part of their liturgy. Sometimes they used horses in carrying out their actions of prayer, of worship, of their liturgy. With our strict traditions we never allowed dancing in the worship of God. We found it was not respectful, not becoming to so great a being. The American Indians found all graceful actions to be worthy of a part in the liturgy, in the worship of the Almighty Creator.

The graceful movement of their bodies satisfied themselves and all who looked on in reverence. Their whole physical being pulsed with the act of adoration as they moved in the rhythm of the dance. We must not look on dancing as something that is totally removed from worship. The Indians, with their theology of Creation used all things to worship God.

Their whole being was employed in the act of worship. It was not a rite of pagan excess; it was a rite of human worship. It is something that most Americans have never understood, nor in which they participated. It is a response to the Great Creator, the One who gives all.

Before Columbus came to this hemisphere, American Indians worshipped God. Their worship had none of the accepted ceremonies of Judaism, Christianity or Moslem traditions. But, it was a true worship. There are many accounts of revelation to tribes to direct them in their rituals and rites. American Indians had only the experiences that were known to them. They were profoundly reverent and respectful in all they did in their worship.

They worshipped God in the only way they could, with the full exercise of their bodies, with songs, with silence, with liturgy that might make us pause and wonder at the reverent way it was performed. We are not of that tradition and we are caught in our inability to fully understand the sincerity with which they publicly worshipped God.

Probably in the worship of God, which is at the heart of every culture, we are most different from people of another culture. Something that is most sacred to us is the very point at which we look askance on those of other cultures. But it is at this very point that we have the greatest unity with those of other cultures. Respect for the worship of others, even when it differs considerably from the patterns of worship we know, is a sure sign of our maturity in a culture. We must feel at ease in our own culture, but we must also feel respect for the cultures of other peoples, especially the American Indian who at such a great price, welcomed our ancestors to this land. We are not here by any right of our own. This whole country belonged to the American Indians before our ancestors took it by force.

How unthoughtful it is for us to disregard the religious practices of the American Indian and suspect that they performed pagan rituals that were to be merely tolerated, at our best response. The American Indians were very sincere in worshipping God according to their traditions. We should not consider it beneath us what is not of our tradition.

In the First Amendment, the free exercise of religion clause is composed in terms of what the government cannot do to the individual. It is not an expression of what the individual can extract from the Government. Surely, the American Indians join all of us in the right to have the Federal Government acknowledge their right to worship God according to the dictates of their consciences.

One of their basic rights as American citizens is the right to the practice of their religion.

American Indians accepted all people into their land. Those people placed in their charter of government the freedom that all persons have to worship in their own way. That guarantee must extend to the American Indians above all others.

There should not be any need for Senator Cranston to introduce S. 2250. It should be readily understood, but it is not. So, the American Indian Religious Freedom Act of 1978 must be amended to include all the Federal land that this Nation owns. Where that land is used by American Indians in their rituals and rites of worship, nothing should be done to deprive them of that right. All of us would be better men and women if we recognized what they are doing, worshipping God rather than performing some strange ceremony which we see as a curiosity.

The expression of a people who humbly perform in the open air, removed from all human habitation, their worship of almighty God, is always deserving of respect from other people, especially those who have benefitted so deeply from the American Indians.

I think it appropriate that Father Zuern and I, as Catholic priests, make a petition for the American Indians in the use of land for their worship of our Creator. They use the areas away from the beaten track. They perform liturgical rituals that are elaborate and extensive. The fact that they do not perform in a church, synagogue or temple does not make their ritual any less valid. The fact that they dance does not take away from their liturgical prayer. They perform a public act of worship that is equal to that of any religion.

If all religions do not stick together and support the acts of worship performed by each other, we run the risk of having all-out acts of worship hampered by the government for one reason or another. An attack on one religion is an attack on all religions.

American Indians need the right to perform their act of worship to express their inner feelings to God. If they are denied that right, all religions are in danger of being denied that right.

We urge you to support S. 2250. I thank you very much for this opportunity.

[Prepared statement of Monsignor Lenz appears in appendix.]

The **Chairman**. On behalf of the committee, I thank you very much, Monsignor.

There are moments in one's life after having heard a beautiful statement when you find yourself saying, "I wish I had said that."

I will now call on Mr. Moore.

STATEMENT OF STEVEN C. MOORE, ESQUIRE, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND, BOULDER, CO

Mr. **Moore**. Thank you, Mr. Chairman and members of the committee. Good morning.

I first want to extend my thanks for this opportunity to testify before the committee this morning. I am a senior staff attorney with the Native American Rights Fund, a national legal Indian legal rights organization which has been in existence for 18 years.

For nearly two decades, the Native American Rights Fund has been committed to the preservation of the religious and cultural integrity of Indian people. On behalf of my organization and our clients, I sincerely commend the leadership, determination and fortitude demonstrated by the Chairman and Senator Cranston and Senator DeConcini for cosponsoring S. 2250.

I particularly want to extend my appreciation to this committee for the work it has done and the interest it has in the preservation of religious and cultural integrity and equality for Indian people. These represent one important attribute of our constitutional democracy that is oftentimes forgotten with respect to this small minority group of people that live in the United States.

One month ago, the U.S. Supreme Court in *Lyng* v. *Northwest Indian Cemetery Protection Association* dealt a potentially life-threatening blow to Indian religion by removing from constitutional scrutiny perhaps the greatest threat to Indian religious practice, that being the management of Federal lands by various agencies in such a way as to unilaterally subordinate Indian religious values to the economic interests of timber, mineral and water power development.

Prior to the *Lyng* case, in *Bowen* v. *Roy,* a 1986 Supreme Court decision upon which the court relied heavily in the *Lyng* case, the Supreme Court had developed what is commonly referred to as an "effects" test where the court examines the nature of the effect of Government conduct on religious beliefs and practices as a means of determining whether an impermissible burden on religion was likely to occur. Under such circumstances, the Government's interests were required to be sufficiently compelling to outweigh the interests of the religious practitioner.

An exception to that effects test was made 2 years ago in the *Bowen* v. *Roy,* where Government conduct in that case was found to be purely internal in nature. The court said such conduct produces no external effects on the exercise or practice of religion and thus no religious infringement.

In the *Lyng* case, the court, in essence, changed the rules of the game again, but even more substantially and dramatically than in the *Roy* case. In the *Lyng* case, the court completely threw out the effects test, now requiring religious litigants to prove that Government conduct affirmatively coerces one to violate one's religion as a means of demonstrating religious infringement.

Key for this committee's understanding of the decision, the Supreme Court in the *Lyng* case ruled that mere incidental effects of government activities which do not produce affirmative coercion are permissible as a matter of law. Thus, the Supreme Court, in Justice Brennan's view, in dissent, elevated the nature or form of the Government's restraint of religion over the substance and effect of it.

As an aside, I believe it is important to add that this change stopped just short of an "intent to discriminate" standard that was rejected by a majority of the Supreme Court justices in *Bowen* v. *Roy.* In the *Roy* case, Chief Justice Berger would have required an individual challenging a government action on religious grounds to prove the Government intended by that action for there to be some result of religious infringement.

The retreat from the effects test in the *Lyng* case stands in striking contrast to the Federal Voting Rights laws which require litigants to demonstrate only that the effect of government conduct relating to voting practices is discriminatory, not that the Government intended to discriminate against a racial minority group in the conduct of elections.

In dissent in *Lyng,* Justice Brennan strongly urged the need for mutual accommodation between Indians and Government. Senator DeConcini made a reference a few moments ago to the importance of being able to mutually accommodate Indian interests and government interests. That is really the hallmark of Justice Brennan's dissent in *Lyng,* the importance of mutual accommodation and compromise from both sides.

Since in *Lyng* the majority decision took away the constitutional free exercise rights of Indian people, returning to a "balance" of mutual accommodation means returning some semblance of fairness, equity and balance in an area which Justice Brennan referred to as, "One of the key stress joints between divergent world views in American society." If left alone, the decision in *Lyng* will only further polarize these divergent world views and attitudes.

Under the American Indian Religious Freedom Act, if amended as proposed, Indians would know in express terms what standard of proof was required of them. They would know in clear terms that more than an allegation of sacredness of land is required. In such a situation, Indians would be forced to make decisions, sometimes difficult, about what to protect and what to let go, where to fight and where to accommodate the needs of the broader American society.

Thus, the fear or paranoia raised by the Administration and by representatives of timber and mineral development interests this morning about thousands of challenges to Federal land management activities are unfounded. But I am convinced that not even the majority of American society believes that Indians should never be able to win in this balance between religious needs and needs of the broader American society.

What a cruel irony that in *Lyng*, the one to be litigated through the Federal Appellate Court system where the Indians won at the Court of Appeals level, the Supreme Court then changed the rules of the game so that the Indians would lose. What message does the *Lyng* decision send to Indian people? That the American constitutional democracy does not respect your uniqueness, your unique religions and cultures? Unlike black people, who before the Civil Rights era were forced to the back of the bus, but at least could sit on and ride the bus, the *Lyng* decision by the Supreme Court last month tells Indians in no uncertain terms that they cannot even ride on the bus.

Felix Cohen, the preeminent scholar in the field of Indian law and jurisprudence spoke these hallowed words approximately 40 years ago: "Like the miner's canary, the treatment of the American Indian by the American Government reflects the rise and fall of our democratic faith. If and when the smallest and most indefensible cultural and religious minority group in America today, the native American, can be so deliberately and purposefully persecuted, as the Supreme Court has demonstrated in *Lyng*, all other religious minority groups should up and take notice, for one of them is next. I can assure you of that.

While I do not agree with every last detail of S. 2250, the Cranston bill to amend AIRFA, I today congratulate you for your courage, fortitude and dedication to the cause of shifting the balance between Indians and the Federal Government back again to a point where some measure of religious free exercise is afforded to Indian people, to a point where Indian people can continue to look Federal bureaucrats in the eye and expect to be treated with respect as opposed to indignance and derision, to a point where Indians can believe that they are not the only ones to be forced to give, give, give and give again, and to a point where they are allowed on the bus of religious freedom.

The Supreme Court has denied to the Indians the right of religious free exercise as a constitutional right. This body can begin the long process of restoring that right as a Federal statutory right.

In conclusion, I pledge the support of myself and the Native American Rights Fund in working with you and your staff to achieve the still elusive goal of religious freedom for America's first inhabitants.

I would be happy to answer any question you might have.

[Prepared statement of Mr. Moore appears in appendix.]

The CHAIRMAN. Thank you very much, sir.

May I now call on Dr. Walker.

STATEMENT OF DR. DEWARD E. WALKER, JR., PROFESSOR OF ANTHROPOLOGY, UNIVERSITY OF COLORADO, BOULDER, CO

Dr. WALKER. I wish to express my appreciation for being invited to participate in what I think is a historically very important action in which several centuries of religious persecution of native Americans is beginning to be corrected.

In 1978, the American Indian Religious Freedom Act was passed with the intention, however unfortunately necessary, of granting to native Americans the religious freedom that other Americans took for granted. It is my view that the action undertaken initially on the American Indian Religious Freedom Act of 1978 was only a beginning and that this beginning must be followed by a continuing effort; this is merely one step that we are now taking to help reverse a long-standing program of Federal persecution and Federal hostility to the practice of native American religions.

This morning I want to comment on a couple of aspects of the proposed Cranston bill. The proposed Cranston bill is absolutely necessary. The present American Indian Religious Freedom Act has not worked well for a number of reasons. However well-intentioned, however carefully crafted, the American Indian Religious Freedom Act is flawed in a number of respects. The Cranston amendment proposes to correct some of those flaws and in so doing, it is to be applauded as a major step forward.

It is my view that the flaws in this act, however, are not limited solely to the lack of court jurisdiction or to the absence of a meaningful standard by which judgements are to be made. It is also my view that these other shortcomings in the American Indian Religious Freedom Act should be reviewed by this committee as it undertakes its work of amending the American Indian Religious Freedom Act.

I would like to speak first to the possibility that, in erecting a standard to strengthen the American Indian Religious Freedom Act through legislation, that the standard be sufficiently wide to encompass the diversity of practices that are represented among native Americans. I believe that in previous legislation, and particularly in the court interpretations of the American Indian Religious Freedom Act, unrealistically high standards that Mr. Moore has already alluded to have been developed.

The so-called centrality standard has been devastating in some respects, because it has required native Americans to demonstrate that virtually the whole of their religion was being brought to the edge of extinction before First Amendment protections were activated. I think whatever standards you erect for the guidance of administrators and the judiciary that those standards need to be sufficiently wide to encompass the diversity of native American religious practice.

I believe that the "centrality standard" has been devastating and that it is part of those mechanisms which have pushed native Americans off the bus of religious freedom as Mr. Moore has suggested.

I would like now to turn to consultation. It has not been has talked about very much this morning except by the gentleman from the Bureau of Land Management.

In the past 10 years, since the passage of the American Indian Religious Freedom Act, I have had opportunity in the Northwestern part of the United States to observe a number of AIRFA consultations. These consultations, some 25 in number, have involved 15 tribes in this region and 6 major Federal agencies. After looking at these consultations carefully, I have drawn a number of conclusions about the adequacy/inadequacy of the so-called consultation process that is called for in AIRFA I would like to share with you this morning some of my observations from this exercise.

First, there has been a pronounced tendency in the Federal agencies to assign native American consultation exercises on religious freedom to archeologists. These agency professionals are thought somehow to be capable of dealing with native American religious concerns. In reality, they appear to be little qualified. It must be that they have an interest in burials, and perhaps agency heads equate this interest in burials with a competency in matters of native American religious belief and practice. It is my view that other professionals with different training are necessary if the agencies are to fulfill their assignments to consult with native Americans on matters of religious freedom.

A second tendency that I have observed in these 25 examples of AIRFA consultation, is a widespread tendency in the Federal agencies to involve native Americans in the planning for projects too late for them to have meaningful input and influence. The typical pattern is for the planning of these projects to have gone forward, and even for implementation to have begun before native Americans are noticed or notified; notification is the extent of consultation in most cases. Meaningful involvement at the earliest possible time in the planning of projects on Federal lands that may impact native American religious practices is obviously called for and currently missing in most cases.

Another problem is the vague and inadequate descriptions of complex projects such that native Americans are unable to understand the impacts that projects may bring to sites of religious importance.

Another problem I notice in consultation on AIRFA by the agencies is that when shortcomings in the consultation process are brought to the attention of Federal land managers, they seem generally unwilling to admit the existence of problems or to take such objections seriously. This is especially evident in their failure to commit the funds, personnel, and time necessary for meaningful consultation to occur. It is my view that the agencies must commit more funds, personnel, and time if consultation is to be effective.

Yet another observation from these 25 instances of AIRFA consultations is that some Federal agencies have failed to fully develop or implement uniform consultation procedures as called for under AIRFA. An example of that was recently seen on the Hanford nuclear reservation in the State of Washington where the Department of Energy has been dragged, reluctantly into a consultation process with the affected tribes, but only after the affected tribes sought special legislation to be designated as affected parties; only those tribes in the Northwest were able to achieve this status. In this instance, projects have been planned and implementation has begun before tribes have been involved; even in this special situation where tribes forced themselves on the agency their involvement has been very slow indeed.

Basalt waste isolation project reclamation of the damage done to certain sacred areas on the Hanford reservation is in my view proceeding without meaningful consultation. Implementation of reclamation plans for Gable Mountain where tunnels were bored into it, is moving forward without meaningful opportunity for the tribes to influence the process. Once again, notification of the tribes is taking place, but very little meaningful opportunity has been presented up front in the planning stage or in opportunities for the tribes to observe and influence the implementation of these plans.

Yet another serious obstacle to effective, meaningful consultation, is the present latitude permitted the Federal agencies in selecting tribal consultants and establishing consultation procedures. It is my view that the agencies have a relatively free hand in choosing individuals from communities that may or may not be representative of the tribal views essential to meaningful consultation. The tribes must have more control over the selection of consultants, including spiritual leaders, if AIRFA is to work effectively.

In bringing my observations on consultation to a close, I wish to call attention to documents I have submitted today. The first is a document describing what I believe are some of the limitations in the centrality standard. That document entitled, "Protection of American Indian Sacred Geography: Toward a Functional Understanding of Indian Religion Focusing on a Protective Standard of Integrity," is the first document I have submitted today.

The second document I have submitted to which I now refer, is the "Chief Tendoy Cemetery Memorandum of Agreement Between the Idaho State Historic Preservation Officer and the U.S. Department of the Interior, Bureau of Land Management, Idaho," in which the Shoshone-Bannock tribe had a meaningful, three-year involvement based on time, money and personnel committed both by the BLM and by the tribe to this consultation process. I call attention to this as an example of a model consultation which took place, not because regulations really require it, but because of good will and a lot of interest and dedication on all sides. It is an example that you may wish to consider when you craft regulations that will improve what I regard as one of the major shortcomings in present interpretations of AIRFA by the Federal agencies.

Thank you very much.

[Prepared statement of Mr. Walker appears in appendix.]

[Other submitted material is retained in Committee files.]

The CHAIRMAN. Thank you very much, Dr. Walker. Your documents will be made part of the official files of this committee.

Monsignor, the first witness, Mr. Robison, in response to a question, suggested that it was difficult to define Indian religion because of its vagueness and its mystery and, I believe he said, oftentimes they are very secret. Isn't it a fact that all major religions have very mysterious ceremonies and secret ceremonies?

Monsignor LENZ. Senator, I think that could be one interpretation. But as I brought out in my testimony, we sometimes want to put our concepts of what we think the other person really means into that person which is not a valid way of judgment. The problem we face, and I find this also in the Catholic Church because I have had to dialogue, to use the proper word, but it is deeper than that, against some of the treatment that our people have given the native Americans.

I lived in Paraguay, South America with the Guarnee Indian people. I spent time there. I had to learn the culture of the Guarnee people and learn some of their language. My whole idea of religion was changed when I saw the beauty of those people. I think there is a lack of understanding on the part of many of us and we try to put our concepts into the minds and into the mouths of other people.

So, I would say, yes. Many of us do not have the right understanding. This is what we have to be open to. We have to learn. There is mystery in the Catholic faith. There is mystery in the Jewish faith. I think we have to respect all the different faiths and in this way, we must give attention to the native Americans. My personal appreciation, as I have worked now for 11 years with native Americans and with the Eskimo people and the Aleut people, grows stronger every day of the goodness of these people and the depth of their spirituality and of their religion.

I would say that we just have to be open and give the benefit of the doubt and not judge them by our Judeo-Christian concepts.

The CHAIRMAN. It is too bad that leaders of your character were not around many hundreds of years ago. It would have helped the situation greatly, I think.

Mr. Moore, I believe one of the major points in the *Lyng* decision was that as long as Government actions do not coerce the native American to violate these religious practices, that action was okay, even if the effects of that action may have some impact upon the religious practice. Is that your interpretation of the *Lyng* decision?

Mr. MOORE. I think that is a very correct interpretation of one of the key points made in the decision. Yes.

The CHAIRMAN. If that ruling is to be permitted to stand as the supreme law of the land forever inviolate, what effect would it have on Indian religious practices?

Mr. MOORE. I think, Mr. Chairman, that Indian people in the practice of Indian religion in this country have suffered from 200 years of incidental effects of Government actions and activities. I think that if the *Lyng* decision is allowed to stand as the law of the land, we will return to an era which I would describe as perhaps pre-1934, the era of the New Indian Deal, the appointment of John Collier as Commissioner of Indian Affairs. One of Collier's first acts was to issue a directive instructing all Federal employees to cease and desist in any form of persecution of Indian religion. We would return to a pre-Collier era when the persecution of Indian religion would begin to flourish.

If, by analogy, we look at the Civil Rights Era and the Voting Rights example, in specific, I think Congress has recognized over the years that in terms of determining when discrimination occurs, you look at the end result, or the byproduct of Government activity. You look at the effect of the Government activity. If the effect is to produce discrimination, then the Government conduct or activity is illegal, and perhaps unconstitutional. You don't look at the intent on the part of the government players because intent, as a matter of factual proof, is a very difficult standard to meet.

The same thing is now true with respect to Indian religious persecution. How could an Indian, or a group of individual Indians who practice their traditional religions, prove that employees from a Federal agency, BLM or the Forest Service, for instance in noticing up a timber sale and issuing a lease to clear cut an area of forest in Montana, intend to destroy the practice of Indian religion? That would be simply impossible.

So we have to be able to look at the effect of Government activity upon Indian religion. If the effect is to produce infringement, then there should be some showing by the government that their interests are sufficiently compelling to outweigh the needs of the individual Indian religious practitioners.

The CHAIRMAN. Dr. Walker, it has been suggested by Mr. Moore and Senator DeConcini, that what is needed here is mutual accommodation based upon mutual respect, taking into consideration the needs of both parties, the Government of the United States and the native American Indians. I would suppose if one is to achieve mutual accommodation, in this case, we must have proper notification and consultation.

You have in your testimony suggested that you have studied in some depth 25 cases involving notification. Can you make those studies available to the committee?

Mr. WALKER. Yes, Mr. Chairman.

The CHAIRMAN. I think this is an important part of our study here, to determine whether the Bureau of Land Management to date, in pursuit of the intent of the act, carried out proper notification and consultation. It is one thing to say, I have notified her—

and just fulfill the requirements of the 15-day notification which is meaningless—and quite another to have consultation that is based upon mutual respect.

Is it a bulky report?

Dr. **Walker**. At this time, it is a series of field notes and observations that I brought together specifically for this particular hearing.

The **Chairman**. Oh. Do you have it with you?

Dr. **Walker**. No; I do not. But I have the results of it which I have already shared with your committee and I will be happy to share it in greater detail. I will try to prepare a paper for you if you would like.

The **Chairman**. It would be extremely helpful. It covers notification and consultation?

Dr. **Walker**. Yes; may I make one point?

The **Chairman**. Yes sir.

Dr. **Walker**. In terms of the Bureau of Land Management example that I referred to in the State of Idaho, I was particularly impressed with how favorably the process had gone forward. The Department of Energy example I chose from the State of Washington was an example in which active hostility and obvious efforts to use the loopholes in AIRFA were employed by the Agency in my view. I was contrasting the example from Idaho with the Department of Energy example from the Nuclear reservation at Hanford in Washington state.

The **Chairman**. To all of you, may I ask this general question?

It has been argued that if this measure becomes the law of the land, it would not only hamper, but stop all development in the West.

Dr. **Walker**. My view is that this is a phantom created by those who wish to protect economic uses of Federal lands as the prime use and at all costs. It is my view that the danger of such cessation of all Federal, economic, and public uses of the lands except religious uses, has been incredibly exaggerated.

It is my view that the uses that Native Americans request on Federal lands are very unobtrusive, very non-destructive and have the effect of enriching and protecting the land. I believe that any effort to depict these efforts as obstructing economic progress, or obstructing access by other parties, is an incredible and very unfair exaggeration of the impact of what is being proposed here.

The **Chairman**. Mr. Moore.

Mr. **Moore**. Thank you. Yes; Mr. Chairman, I have some views on that point. I believe that Justice O'Connor writing for the majority in the Supreme Court decision in *Lyng,* referred to it as a "religious servitude," that if the Indians were to prevail, they in effect would have a veto power, an absolute veto power over all land management activities by Federal agencies in the West. I think that is simply an exaggeration of the real situation.

I think an argument can be made that Indian people, by virtue of their aboriginal inhabitation of the continental United States for thousands of years, should have some legal protection for their religious use of Federal land, and a servitude of some sort is implicit and should be recognized as a matter of fairness and equity in this country, whether be it by the courts or the Congress of the United States in legislation and law making.

But that is not to say that servitude is absolute and would apply under all circumstances and would and could be used as a veto power. That servitude is equitable in nature and, again I would go back to the phrase, reflects the need for "mutual accommodation."

I think that both sides, Indians and Government agencies should recognize that compromise is necessary here. We are dealing with a situation where there are divergent world views that oftentimes clash. The conflict is irresolvable—seemingly irresolvable—at times.

The point I want to make is that Indian people have lived under a foreign Government, in effect, for 200 years now. They recognize what it means to accommodate the needs of the broader American society. They have been accommodating the needs of that society and giving up land and giving up rights and resources for that 200 year period. They understand what it means to give.

It is time that the dominant society, in turn, give back to the Indians some measure of religious free exercise. If this amendment becomes law, I don't see Indian people and their religious rights as being elevated to a status of superior rights. What we're trying to do is just reinstate some fair balance.

The CHAIRMAN. I think at that point, we should recall that 200 years ago our Nation recognized the sovereignty in and the ownership of over 300 million acres of land by sovereign Indian tribes. Today the descendants of these Indian tribes are, in their sovereign capacity, holding title to about 50 million acres of land.

So, as you have indicated, one way or another the Indians have accommodated the other Americans by sharing 250 million acres of their land.

Monsignor, do you have anything to add?

Monsignor LENZ. Senator, I think it goes back then to the justice question, and as you have mentioned, the acreage. If this is known to the general public, I think there would be no question of the general public being on the side of the American Indian. It is a question of the fairness and a question of the one-sided issue. The Indian just has to be given his rights. I have seen how the native Americans are constantly being pushed aside. They are the ones who have to do the fighting with the courts and with the public.

I just think that it is a one-sided issue. It is always those against the native Americans instead of the native Americans being given their rights. It is a large country and, according to some, they think that the whole country practically is going to have to suffer instead of small portions. The Indians just want their rights and they want respect.

Again, I say it's a basic question of justice. That's all the native Americans really want.

The CHAIRMAN. I thank you very much and I thank you all for your contribution this morning. I can assure you that it has been extremely helpful. And Monsignor, once again, thank you for your statement.

Our next panel consists of the following: Ms. Suzan Harjo, the Executive Director of the National Congress of American Indians of Washington, DC; the Honorable Pat Lefthand Tribal Council

Member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana; Ms. Marilyn B. Miles, Esquire, California Indian Legal Services of Eureka, California; and Ms. Mahealani Ing, Executive Director of the Native Hawaiian Legal Corporation of Honolulu, Hawaii.

May I call upon Ms. Harjo first? Welcome again.

STATEMENT OF SUZAN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Ms. **HARJO**. Thank you, Mr. Chairman.

The National Congress of American Indians supports the good Senator's amendment to the American Indian Religious Freedom Act as a very good first step to restoring the balance you have heard about earlier that has been missing for so long for Indian people in what is supposed to be a balancing test of interests under this judicial system. The United States has been, at best, a bad juggler doing a balancing act. What is always missing, and always falling on the ground, is the interest of the Indian people.

The Cultural Concerns Commission of the National Congress of American Indians has reviewed the draft of this legislation prior to it being introduced and found it a worthy vehicle for raising a number of other issues and for trying to revive some interest in the Federal agencies in taking Indian religious concerns into consideration in a meaningful way.

We know from the BLM statement how they view Indian religious freedom as a program of Indian tribes; that's quite clear in their statement. Indian religion is not a program. Indian spirituality is a world view and, when the last people who believe and practice traditional Indian spiritual ways would be gone, there would be no more Indian nations. It is the fabric, the network, the glue that holds the Indian nations together.

We do support heartily the legislation. We are not wed to every aspect of it, to every single word of it. We, like others here before, are concerned with such terms as "historically indispensible." We are always the victims of the terms of the colonizer. We never know whose history is being talked about and we are always stuck with terms like "history" and "pre-history" to subjugate us. We have historic inhibition about vagaries in language.

I coordinated the report mandated by the American Indian Religious Freedom Act, and the 50 some agency reviews in the Federal Government, when I was a Special Assistant in the Office of the Secretary of the Interior in 1978 and 1979. I left that position the day the report was delivered to Congress in 1979. I also wrote much of the text of that report, together with Vine Deloria, Jr., Sam Deloria, Vicky Santana, Roger Buffalohead, Walter Echo-hawk and others.

Some 60 agencies of the Federal Government reviewed every line of the text. The most cooperative agencies were the Defense agencies and the Customs Service; the least cooperative were the Bureau of Indian Affairs and the Forest Service. The Bureau of Indian Affairs was the least cooperative because of its past history of having been the agent of the Congress to teach Indians the "arts of civilization" and to Christianize and bring Indians into the mainstream of America.

The Forest Service was the most recalcitrant of the Federal agencies to participating in the 50-agency review required by the American Indian Religious Freedom Act. It became a full legislative agent trying to stonewall the legislation, trying to keep the legislation from being enacted. The Forest Service worked very closely with Congressman Foley of Washington State, who would not agree to the legislation going forward in the House unless Congressman Udall agreed to say that the bill had no teeth and that it was merely a policy statement. Only then did Congressman Foley and the Forest Service allow the bill to go forward in the House.

The Forest Service then tried to keep the bill from being signed. Then the Forest Service tried to stop the report from going forth, even involving its Affirmative Action Equal Opportunity Office, though we know that even today the Agriculture Department and Forest Service have the worst records in Federal Government for affirmative action. They even involved the Equal Opportunity Office to try to change the historic analysis and overview section of the report so that wherever it read "Spanish conquistadors," they would have "Hispanic conquistadors." From the superficial to the substantive, the Forest Service worked against the interest of Indian religious freedom.

We have come full circle in 10 years, from the Forest Service trying to work to suppress Indian religious freedom to keep the Federal Government from balancing the interest of Indian religious freedom along with other important areas of other people's lives, to the time today when the Forest Service has been successful in the Supreme Court in saying that the Constitution does not protect and the Religious Freedom Act does not protect Indian religious freedom.

This is an area that evokes great emotion. It has been said that it evokes great emotion from the Indian side. It does not evoke great emotion from the Indian side; it evokes concern. The Indian side is, I believe, too strong to be emotional about the subject. It evokes near hysteria from many of the non-Indians.

I think the best evidence of this is the way that the Supreme Court decision is written. It is an hysterical, mean-spirited decision; I don't think I've read one that is more so.

It reminds me of the remarks and comments of one person in the Department of the Interior, in the Office of Policy, Budget and Analysis, who wanted to stop the report from going to the Congress two weeks before it went. Her father had been a missionary in South Africa. She had grown up Christianizing the South African native people. She said, we are here in this Department trying to promote heathenism and paganism and I will not have it. I thought that was an absolutely extraordinary way for a person to behave.

I have that same sense from the Supreme Court decision; I think it is an unworthy decision. If you apply that decision's test to murder, you could never convict anyone. You'd have to have a smoking gun and a notice of intent and a signed confession before you'd be able to convict anyone. We are talking here about a crime of passion and also a crime that distances itself from its motive. We do have incidental abridgement of religious freedom that has the same effect of coincidental genocide that is occurring today. I think that this committee needs to help us do something about that, and you are and we're forever grateful.

I appreciate the opportunity to share these thoughts with you. I know that the committee has at its disposal prior testimony from the only other hearing that the Congress has had on this subject since 1979. That is the hearing of June 10, 1982, before the House Subcommittee on Civil and Constitutional Rights of the Judiciary Committee. I would be happy to elaborate on or to share any of the specific information about what the federal agencies can do, even without legislation, to further remove the barriers that now stand in the way of Indian religious freedom regarding that testimony and those documents.

I will certainly provide to the committee my thoughts on what the next administration could do in this regard, notwithstanding what the agencies can do without legislation. We need more building blocks. This legislation is not the be all and the end all, but it is an important building block that we need to add to reach a goal where Indians are not accommodating ourselves out of existence.

Thank you for your help.

The **CHAIRMAN**. Thank you Ms. Harjo.

May I call upon Mr. Lefthand?

STATEMENT OF PAT LEFTHAND, TRIBAL COUNCIL MEMBER, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, PABLO, MT

Mr. **LEFTHAND**. Thank you, your Honor, for allowing me to make a presentation at these hearings. It is kind of a last moment thing. We were notified that we did not make the list for a person to be over here to testify. Later on we found out that we would be here. I really want to thank the Senator for making that possible.

I have a prepared statement I would like to read, and also there has been one given to your staff.

The **CHAIRMAN**. It will be made part of the record.

Mr. **LEFTHAND**. I travelled here with another counsel and colleague, Lawrence Kimmel, from our reservation, the Kootenai Tribe, and one of our staff attorneys, Harold Monto. We are here with great difficulty.

Before I start reading the introduction, we once again have what we know as our very soul searched and questioned by another race of people. That is about the only thing that we have left as Indian people is our religion. Now they are even after that.

It is with great heartfelt sincerity that we are here today before this committee to make a testimony and we hope eventually it will be understood that we are a people. We exist today by respect from the past of our people, by respecting the presence of our people, and by respecting what and where we are going to lead our people in the future. All this evolves around the religion that has been with the Kootenai people.

To the members of the Committee, the Confederated Salish and Kootenai Tribes of the Flathead nation testify to the concept of amending the American Indian Religious Freedom Act, AIRFA. We are in support of the concept, but we feel the present language of the amendment does little to blunt the disastrous impact of the U.S. Supreme Court decision in the case of *Lyng* v. *Northwest Indian Cemetery Association*. We realize that the amendment was proposed prior to the case and that no one could have anticipated the devastating decision by a narrow majority of the court. Apparently neither the First Amendment to the U.S. Constitution nor the American Indian Religious Freedom Act offer American Indians any protection from Federal activities which result in the prohibition of, or destruction of, Indian religious practices. With a sweep of the pen, five Justices of the Supreme Court have rewritten one of the country's basic constitutional tenets that neither the Federal Government or the States may, without compelling reasons, engage in activities which prohibit the free exercise of religion.

The enactment of the American Indian Religious Freedom Act in 1978 signaled the beginning of what should have proven to be an era of religious tolerance between the United States and the original inhabitants of this continent.

Little follow-up was accomplished after the 1979 Task Force Review called for in the act. This was partially because the American Indian tribes felt comfortable with the protections afforded to religious practices via traditional interpretations of First Amendment rights, and partially because of the initial responsiveness of Federal agencies to the concerns evinced in the American Indian Religious Freedom Act.

It is now apparent that our trust in the sanctity of the heretofore traditional First Amendment protections was ill-founded.

It is for these reasons and others that we will outline in this testimony that we urge a strengthening of AIRFA in terms of preventing interference and destruction of religious practices by Governmental activities on Indian lands and in off-reservation areas of traditional use.

The Salish and Kootenai Tribes of the Flathead nation have long committed themselves to the protection and advancement of Indian religious freedom. Despite being among those tribes which were forced to accommodate a majority population of non-Indians on the reservation, we have persisted in the practice of our traditional beliefs. These practices frequently require us to visit off-reservation sites located upon Federally-administered lands.

Some of the off-reservation sites are so central to our beliefs that the lack of access to or the destruction of these sites would deal a deadly blow to the heart of our very existence. The disturbance of these sites through officially sanctioned survey and excavation is as disturbing to the sacred aura of these areas as is the illegal excavation. The tribes of the Flathead nation have engaged in an ongoing confrontation with various Federal entities over the necessity for disturbance and excavation of the antiquities left by our ancestors.

To allow these sites to be excavated and destroyed on the personal whim of those Federal and State employees professing to scientific curiosity is akin to sanctioning the mutilation of our ancestors. It facilitates the artificial wiping out of any trace of our existence. The urge to do this seems to us quite frankly, genocidal. It is as if the desire to have us disappear will not be complete until all traces are ripped from the ground and placed on a shelf.

In addition to the above-mentioned activities with regard to the sacred sites and sacred objects, the tribes have come to the forefront of the issues of repatriation of the remains of native Americans which languish in public museums and in private collections throughout the country. What other racial group in this country has been forced to endure the sacrilege of watching the remains of our relatives ripped from their burial sites and displayed to satisfy a totally unfathomable and morbid sense of scientific curiosity?

The continued excavation and curation of American Indian remains is as detrimental to Indian religious freedom as would be the spiriting away and display of the remains of the Saints of the Catholic faith. There is absolutely no difference and there is no justification either morally or scientifically for such practices to continue.

Presuming such remains are properly catalogued as to location where found, the repatriation of the remains to a burial site in the area of original location is not an insurmountable task. Tribes should not have to prove the bones are those of their ancestors. Tribes occupying an area where the remains were found should be presumed to have the right to repatriate them. In the absence of tribal presence, repatriation to or near the original burial site should be done by the Federal Government at its expense.

The Salish and Kootenai tribes of the Flathead nation have also been at the forefront of the issues of possession and use of sacred objects and plants as well and their movement across international borders. Our sacred bundles, our sacred objects, our sacred plants and traditional medicines, continue to be a source of controversy with Federal agencies which control border crossings and access to the sites from where these items must be gathered. This access can be denied just as effectively by the designated Federal use as it can be by outright prohibition or by Federal regulation inconsistent with traditional use.

The inappropriate handling and insensitive viewing of our sacred objects and medicines by Federal authorities, especially Customs officials, can be very detrimental as well as totally destructive to the effectiveness of the sacred objects and medicines.

I would like to address some areas of specific concern. The tribes are specifically concerned that the mandates given to the various Federal agencies by Federal statutes, especially the National Historic Preservation Act and the Archaeological Resource Protection Act, result in irreversible damage to sacred sites designated for excavation and curation. All too often, the decision to excavate and curate is made in a scientific vacuum in which every decision is weighed on the side of allowing the activities for the sake of scientific curiosity.

Archeological significance, the death knell for many sacred sites, is determined without the benefit of an assessment of the impact it will have on Indian religious practice. Initial decisions to dig up and shelve are made by those predisposed to digging and shelving. The propriety of the decision, if questioned, is subjected to peer review by others already predisposed to digging and shelving.

The effectiveness of the native American consultation processes in NHPA and ARPA can be summed up by paraphrasing the comment of one official of the Advisory Council on Historic Preservation: "If you refuse to participate in the process the decision to go ahead will proceed without you."

Legislation calling for consultation and consideration is all too often toothless, as was so aptly pointed out by Justice O'Connor in the Lyng decision. Federal decision-making which impact Indian religious freedom should not relegate tribal concerns to the status of a consideration which can be ignored by the Federal decision-maker. In fact, the Federal decision-making processes should be made, in part, by the affected tribe or tribes. In the absence of effective remedies, anything short of allowing the affected tribes to be an integral part of the process by which religious concerns are addressed and effects mitigated, insures the destruction of Indian religious practices.

I would like to discuss some concerns relative to the proposed amendment language.

As presently worded, the proposed amendment puts the final determination of compelling governmental interest, historically indispensible, traditional religion, and serious impairment or interference, squarely in the hands of the bureaucrats. They are the same Federal decision-makers from whom the Indian tribes need protection.

The threshold of serious impairment and interference will be used to the tribal detriment as well as the bureaucratic determinations of indispensability and traditionality. The restriction to Federal land activities will hamstring the tribes in relation to those issues germane to the border crossing, importation of religious objects, gathering plants and medicines, and the repatriation of Indian remains. A more meaningful reference would be to Federal activities which detrimentally impact upon Indian religious freedom.

The present language seems to be narrowly drafted to mitigate the negative impact of the Lyng decision which may or may not have been the intent of the drafters. In the absence of more comprehensive legislation dealing with the other issues we have set forth in this testimony, the Confederated Salish and Kootenai tribes recommend a strengthening of the amendment language. Such strengthening should allow for the affected Indian tribes to become an integral part of the decision process.

The determinations of indispensability, traditionality, impairment and interference are best made with the presence of the Indian tribes in the decision-making body. Federal court remedies should be made explicitly available to the Indian tribes whose concerns are overridden by the Federal decision-maker.

The tribes are also extremely concerned that the issue of guaranteeing confidentiality for Indian religious information is not addressed. Confidentiality for religious information when making the determination of indispensability, traditionality, serious impairment and interference, must be maintained if the Indian tribes are to be able to utilize the full protections of the amendment. The disclosure of sensitive information, inadvertent or otherwise, can be as harmful to and prohibitive of Indian religious freedom as could be affirmative Federal land activities.

The Confederated Salish and Kootenai tribes urge the committee to strengthen the amendment language so that Indian tribes can truly participate in the decision process and have effective remedies when wronged.

I thank the Chairman for allowing me to make this presentation today.

[Prepared statement of Mr. Lefthand appears in appendix:]

The CHAIRMAN. Thank you very much, Mr. Lefthand, for your testimony. Let me assure you we will study your statement very carefully.

Now I would like to call upon Ms. Miles, a very important witness, having participated in the Lyng case.

STATEMENT OF MARILYN B. MILES, ESQUIRE, CALIFORNIA INDIAN LEGAL SERVICES, EUREKA, CA

Ms. MILES. Thank you, Mr. Chairman.

My name is Marilyn Miles and I am Directing Attorney of the Eureka office of the California Indian Legal Services, which is a small field office serving the Indian people in Northern California.

In my position as a field office attorney, I have had the opportunity and the great honor of representing the Indian people from my area who are involved in the case known as *Lyng* v. *Northwest Indian Cemetery Protective Association.* I have represented them through all administrative levels, through a 10-day trial, through the Federal Appellate Court system and most recently at the U.S. Supreme Court.

I speak to you today, not based only on my experience in that case, but on my experience in a field office that is located adjacent to at least three national forests, and the home also of numerous aboriginal tribes.

I speak today in strong support of Senator Cranston's bill. There is a strong need for this legislation. Much as others will try to make this problem out to be an environmental issue, an archeological protection or resource protection issue, this is not that type of issue. This is an issue of basic human rights: The freedom to practice one's religion. It is a basic inherent right that our Constitution has recognized for all others.

We complain so loudly when other countries deny their citizenry basic civil human rights. Yet in this country today, after the *Lyng* decision, we can destroy a religious practice predating this very Nation, a practice which has several thousand adherents. And there is not a single law on the books, not even the First Amendment, to offer any protection whatsoever.

Much as some people, including Federal agents and those who may speak against this legislation today would like, you cannot divorce the use of sacred sites from Indian religious freedom. I will ask the indulgence from other tribes that are here if I may generalize.

Indian people believe certain sites have been placed there and are invoked with special powers by the Great Creator. Accordingly, they go there to conduct religious practices and rituals which are very often at the very core of the religion itself, the very religious belief system on which they operate on a daily basis.

Most of the time there will be no conflict with the Indian use and the other uses of public land. The number of cases that have come up I can put on one hand. So, most of the time the administrative process will handle many of these competing uses. But the G-O-Road is a prime example that there are some circumstances where it will not. There has to be Federal law protection, since we do not have the First Amendment to come into play.

For example, relative to the G-O-Road area, prior to the Forest Service proposing this road, the area has been part of a national forest for over 50 years, and has always been managed for multiple uses. Those multiple uses include fishery enhancement, wilderness, primitive recreational uses, and many multiple uses. It has always worked very nicely. Yet, more recently, a proposal was presented that did away not only with those multiple uses, but with the religious use that was going on there.

What I want to get across is that it is important to realize that in most cases the uses can be compatible. I think it is absurd to argue that this legislation is going to create a problem so serious that we should turn our back on it altogether, because it will not. In fact, the judicial history demonstrates that it has not. When Indian people thought that the American Indian Religious Freedom Act and the First Amendment gave them such protection, we did not have the situation of hundreds of cases coming to destroy the ability of land managers to manage the public lands.

As I have noted, most of the time there will be accommodation. I would note for the committee and for the Chairman today, the Indians I represent are people who work on the land. The Chairman of the Northwest Indian Cemetery Protective Association is a logger. He logs for the Forest Service. He logs for private industry. That's what he does for a living. My other clients have worked in construction. They are not interested in being obstructionists. They are interested in protecting their religion, their Vatican, if I may put it in those words.

There comes a time when certain values, religious values are some, must be considered and have not been considered by the land manager.

There will be instances where the facts will demonstrate, such as G-O-Road has, that the only way of accommodating a particular use is by not allowing a particular project and allowing other multiple uses, including the religious use, to continue.

This legislation is not a veto. It is not a bill that gives anyone special rights beyond what other people have. It would come into play only in those instances where after administrative levels have been tried and worked through, that Indian people would be given impartial judicial review of the situation. That's all they ask in this legislation. Not a veto, but to have someone other than the Federal administrator take a look at the situation and see if, in fact, it deserves the protection that is being sought.

Regarding any establishment concerns that the legislation may bring up, I think it is clear in the law that Congress has the legal right and ability to accommodate free exercise values. Indeed, the Supreme Court itself has said, in the case of *Gillette* v. *United States,* quite apart from the question of whether the free exercise clause might require some sort of accommodation, it is hardly impermissible for Congress to attempt to accommodate free exercise values.

In addition, the other valuable and valid secular purposes such legislation would have would be to protect the very integrity and self-determination of Indian tribes.

In closing, I would just make a couple of comments relative to the Department of Interior's comments earlier this morning.

I would first note that it is curious that relative to the G-O-Road case, the Executive Department including the Justice Department, argued to the Supreme Court that one reason the Court did not have to extend First Amendment protection is because Congress could protect such Indian concerns. In that way they could limit the concern that Constitutional interpretation would apply to all situations. If you needed special legislation for Indian people, Congress could do it. To now come forth after that decision to argue against that special legislation, I find very appalling.

Secondly, the notion that Indian religions are so vague and the areas cannot be defined and therefore, no legislation should be adopted. Again, G-O-Road is a prime example where, even when it is understood what the exact nature of the practice is, where it takes place—Indeed the Forest Service spent over $250,000 studying the religious practice and came to the conclusion through its experts, consultants and so forth that, yes there were core rituals that were occurring in the area. Nevertheless after there was no vagueness left in the case, the Forest Service rejected the findings and decided that regardless of the devastating impact on the religion, it would choose a route through the area.

I submit to you that is one reason for the need for this legislation. I would be happy to answer any questions.

[Prepared statement of Ms. Miles appears in appendix.]

The CHAIRMAN. I thank you very much, Ms. Miles.

Now may I call on Ms. Mahealani Ing.

STATEMENT OF MAHEALANI ING, EXECUTIVE DIRECTOR, NATIVE HAWAIIAN LEGAL CORPORATION, HONOLULU, HI

Ms. ING. Thank you, Mr. Chairman. Aloha, Aloha Kakahiaka. Good morning.

Senator Inouye, members and staff of the Senate Select Committee on Indian Affairs. Aloha Kakou. I bring all of you greetings from home and our beautiful people of Hawaii nei. I bring a heartfelt Mahalo as well for your many years of advocacy on behalf of native Hawaiian health education and economic development needs and concerns.

There are few of us who have not benefitted from your efforts as well as the support and efforts of committee members and many others in this room throughout the years. So, since I may never have this opportunity again to thank you, I wanted to do so at this time.

I would like to spend some time this morning talking about the living religion of Kanaka mauoli, the native people of Hawaii.

I am Mahealani Ing, the Executive Director of a public interest law firm known as the Native Hawaiian Legal Corporation. We were incorporated in 1974 for the exclusive purpose of asserting, defending and protecting native Hawaiian rights and traditional practices.

We were participants 10 years ago in the round of hearings which finally resulted in enactment of Public Law 95–341. It is a special privilege and honor to be here today to support passage of the bill which seeks to amend and give teeth to that law, and to create enforceable legal rights which would authorize a District Court injunction and other appropriate relief.

Others who have preceded me here this morning have already expertly dealt with the technical aspects of case law and the Constitution's free exercise clause. You have already heard described G-O-Road and Yoder cases with their torturous balancing tests. The language of the proposed S. 2250 does not appear to overcome the burden placed upon an individual challenging a government abridgement of free exercise of religion by first having to show a protectable religious interest, and that this interest has been significantly burdened by the Governmental action. Only if a burden is shown would the Government be required to demonstrate or prove, "compelling interest of the highest order" to override the interest claiming protection.

S. 2250 therefore may be a restatement or codification of case law which has failed Indian litigants unable to reach the second inquiry when the court has determined there is no burdening of a protectable religious interest.

I have listened to Marilyn's testimony and I may be incorrect. My staff and I haven't had an opportunity to consult with Indian law attorneys, but we do have some concern about that language. It appears that the language of the proposed amendment could be improved by attending to the threshold question of burden. That is, more precision with respect to the meaning of "seriously impair," and "interfere," as used in S. 2250.

We are in full support of section 3(b) which makes clear Congress' intent that Public Law 95–341 be enforced. However, it does fall short of our proposal back in 1979 that civil as well as criminal penalties be imposed for violations. We are willing to support this language as an expedient and an improvement over no enforcement provision at all.

Now I would like to take a little of the remaining time I have left to talk about the native Hawaiian religion as it is practiced in Hawaii today.

Imagine, if you will, the sound and fury, the conflagration of molten lava and the heaving, living spirit of our Hawaiian volcano goddess, Pele. We have lived by her side since the time of the great ocean migrations over a thousand years ago. How could we but fail to honor her? How could she fail to inspire awe and reverence? Her corporeal form manifests in living red magma, which gives us our 'aina, our land, the source of all our bounty. When we honor her, we say prayers of supplication and we bring her gifts. Our gifts are objects of the highest order that we believe would be most pleasing to her. We may share food, mea'ai, or drink, 'ino, or sweet wild berries, 'ohelo. We love and respect her and her gift to us in return is the 'aina—new land—and most importantly, a humble spirit.

Pele is everywhere—everywhere along our island chain she manifests. As the first two lines of our traditional chant recites: [Remarks given in native tongue.] She lives everywhere in Hawaii, but her home is in Halema'uma'u. As you know, Halema'oma'o is located within a national park system on the island of Hawaii.

At the present time, we must pay to enter this park unless we declare that we are entering for religious purposes. On many occasions, native Hawaiians have suffered obnoxious interrogation by park personnel who believe native Hawaiians are devil worshippers or, in any case, engaging in practices of hocus pocus which gives them the heebie jeebies.

Our native religion is beautiful, coherent, integrated and of profound spiritual depth in origin. We have this in common with our native American brothers and sisters. We have a problem and that problem is the indignities suffered at the hands of ignorant and insensitive park personnel.

We do not believe we should even have to explain our presence, our desire to be with Tutu, Grandmother Pele. We consider this, plus the ogling and jostling we must endure from tourists, an unacceptable intrusion upon our right to freely exercise our native religion. So we are filing a lawsuit. Here is where a law with enforcement teeth and sanctions could help us.

Another example: Our 'aina Kaho'olawe Island. Kaho'olawe has been used for bombing practice since World War II by the Navy. Annually the Navy invites other countries to bomb our island. The entire island is on the National Register of Historic Sites, but the "compelling governmental interests of the highest order," national security, has provided the window through which the U.S. Government unleashes its deadly arsenal.

Consider if you will, the image of a Catholic priest or nun lying completely prostrate in humble obeisance to the Holy Father, arms outstretched, face down. This is the collective posture, the spiritual relationship of our people to the 'aina, the land. We love her. We want to protect her. Her pulse gives rise to the living heart within us. She is our nurturing mother and it is a difficult thing for our people to stand by and watch their mother being brutally assaulted year after year. And it is a difficult thing to stand helplessly by while the perpetrator invites others to take their turn.

What I am sharing with you is an honest characterization of the native Hawaiian sensibility with respect to any desecration of land. We have tried with feeble success to stop the bombing going on 20 years now.

I would like to conclude my remarks with a poem. I wrote it on the plane ride over here and I believe it expresses our pain, how we feel about the continuing mutilation of our sacred 'aina. I call this "Great Father." Great father in this poem is America.

> Great father in your arms, we were baptized in fire. In through the soft fontanel we breathed in your blue flame. It seared our raised swollen skin, turning it black as burnished leather. And in your eternal fire, we bled until desiccated, our hearts and entrails so much powder for your national apothecary. And all that funereal time. What is left of us—Ghosts, in red, white and blue bottles.

Senator Inouye, I thank you for the privilege and opportunity to come before you today and I thank you for the continuing opportunity to come and work out solutions for all our benefit.

The CHAIRMAN. I thank you all very much for your moving and compelling testimony. Although the other members of the committee are not present at this time, I can assure you that they will be reading your testimony.

Unfortunately, at this moment, we have two major items on the floor. The Appropriations Committee is also meeting and several other committees are meeting. Because of this conflict, I am the only one here, however, please do not look upon this as a lack of interest.

I would like to ask a general question because we have heard many speakers suggest that many religious sites have been violated and desecrated. I am certain of that, however this committee would desire to have a compilation of such actions. If there is any list or catalogue of such violation and desecration, it would be extremely helpful in our work, especially as we consider S. 2250.

It is one thing for a witness to say that for 200 years, our religious sites have been desecrated and violated. If you could give us a list of 3,481 such actions, it could make a world of difference. So, it would be most helpful if you could call upon your brothers and sisters to assist us in this.

Does the National Congress have a list or something like that?

Ms. HARJO. I don't know if it is 3,400. We have a good starting off place and we can certainly contact the tribes and ask for additional information.

The CHAIRMAN. I would like to assure Mr. Lefthand that the committee is deeply involved in the repatriation of remains. As you know, we have been negotiating, hopefully on your behalf, with the Smithsonian.

We are now in the process of acting upon legislation to create hopefully, a National Museum for the American Indian. As you know, it passed this committee; it is now awaiting action in the Senate. We, I think, are very close to the final version of the bill. Part of that bill will call for the repatriation of remains.

Unfortunately I don't suppose any one of us will ever know the name or location of these people long ago because many of the remains have no identification, even as to where they were located. As a result, there is a possibility that some of these remains that are listed as Indian may not be Indian. But there are many that can be identified. And for those, I can assure you, every effort will be made to return them to those to whom they belong.

Also in the matter of the insensitive inspection of sacred bundles and sacred objects, we have started discussions with the Canadian authorities and also with the American authorities. I gather at the present time that your problems are primarily with Canadian authorities. Isn't that correct?

Mr. LEFTHAND. Yes.

The CHAIRMAN. We try to explain in your behalf why you should be permitted free and easy access across the border. Maybe the people here don't realize it, but you have to go to Canada for some of your religious practices.

We will try our best to make certain that this trip to and from will be facilitated. I just wanted to assure you that we are aware of your problems and we are trying to do something about it. It may take a little while, but we will do it.

Ms. Miles, you have suggested that the Cranston amendment could be strengthened? Do you have any language that you would like to propose that we can consider?

Ms. Miles. In my prepared statement, I did offer certain suggestions and what I was offering was the opportunity to work with the Committee and with the National Congress of American Indians in coming up with language that would satisfy and accommodate all concerns.

I know there is concern about the specific language now. Our tribes in our area use historical sites, but I was just offering other terms that may be more appropriate, or the ability to work with the committee in coming up with appropriate language.

The Chairman. It has been suggested that Senator Cranston's bill is worthy of support, however, it just addresses one small aspect. Has the Congress ever considered legislation to address the whole problem?

Ms. Harjo. Yes; we have and that has been recommended from time to time over the past 25 years in the history of the National Congress of American Indians. We would be happy to share some legislation as well as the draft Executive Order that was promised in the report to Congress from the Carter Administration nine years ago, and never made it anywhere and was not taken up in this administration.

The Chairman. Well, we will be having a new administration in January. Maybe we can make another try at that one.

Ms. Harjo. Senator, I would like to ask for the Committee's help in one other area. This Committee, I would like to reinforce, has done more than any other committee in the history of the Congress to help Indians in the area of religious freedom, especially in the repatriation of human remains area.

It has come to our attention, primarily called to our attention by noted historian Alvin Josephy, that there exists in the literature indications that the Smithsonian has another collection that we've not been privy to and that I am aware your Committee has not been privy to, and that is a famous chiefs collection. Alvin Josephy located a reference to the skull of Mangus Colorado, a great Apache Chief, with a description of what happened when he was killed. He was beheaded and his brain removed and weighed and his head measured. It was noted that his head was smaller than that of Daniel Webster, but his brain was larger.

There are other indications in the literature and in various notes which lead us to believe that the Smithsonian has myriad records about, if not the actual crania, of people they considered worthy and famous. We would appreciate the committee's looking into that and asking them if this exists and if so, for an examination of it.

The Chairman. I can assure you that the committee is aware of that of which you speak. In fact, the crania that you mentioned—it was a part of the collection that was the result of a request made by the Surgeon General of the United States Army during that time. The Surgeon General was one of those who wanted to measure the crania of American Indians to determine their intellectual capacity. Many of the crania were taken from the battlefields. Many were the result of grave digging.

It is a strange thing; if they did that to my grandfather, it would be grave robbery. But in the case of Indians, it is archaeology and anthropology. We will try to make amends for that to correct that action.

Ms. Ing, because this measure has been always been referred to as the American Indian Religious Practices Freedom Act, one might get the idea that only American Indians are involved. As you know, this measure does refer specifically to native Hawaiians, and also to native Alaskans who may not be ethnically considered American Indians.

Do you believe that this bill should be amended to further make certain that native Hawaiian religious practices are appropriately protected?

Ms. **Ing**. I had another draft of my testimony where I thought it would be appropriate to include native Hawaiian—the two words native Hawaiian—as well as Alaskan natives—everywhere that American Indians appeared. I think that would cover us. I think the intent is to include us and that is what I have always understood.

The **Chairman**. I believe that is a very simple and rational request. I don't think your cousins would mind.

I thank you all very much for your assistance here this morning. It has been very helpful. Once again, let me assure you that the absence of my colleagues here does not mean a lack of interest; they are very interested.

Ms. **Miles**. Thank you.

Ms. **Harjo**. Thank you.

Mr. **Lefthand**. Thank you.

The **Chairman**. Our final witness is a very distinguished citizen of the state of Utah, the former governor. He will be representing the National Forest Products Association, the American Mining Congress and the Timber Associations of California, the Honorable Scott M. Matheson of Parsons, Behle & Latimer. Governor Matheson, welcome, sir.

STATEMENT OF SCOTT M. MATHESON, ESQ., PARSONS, BEHLE, AND LATIMER, SALT LAKE CITY, UT ACCOMPANIED BY JIM CRANE AND MARK GAVRE, TIMBER ASSOCIATIONS OF CALIFORNIA STATE

Mr. **Matheson**. Thank you very much, Mr. Chairman. I am delighted to have the opportunity to testify before your committee this morning and I thank you for the opportunity to appear.

I am accompanied by Jim Crane, who sits on my right, who represents the Timber Associations of California; and Mark Gavre is on my left. They are not here to testify.

I would like to mention that I have placed before you a fairly lengthy statement, about 20 pages. I would like to ask that that be made a part of the record and I would like to acknowledge that Mr. Gavre did the research and the preparation; I get to talk about it. That's the difference.

The **Chairman**. Without objection, your full statement will be made part of the record.

Mr. MATHESON. Thank you, Mr. Chairman. What I would like to do is take a few moments to basically outline my testimony to you in order to save the committee's time and I think cover the basic and salient points.

I have had some experience in public life. I must tell you that when you leave it, there is nothing as useless, I have found out, as an ex-Governor. The opportunity to appear before a United States Senate Committee is therefore, a real honor, I can tell you.

My experience, however, in the public sector, has involved on many many occasions the problems and the concerns of native Americans of my own State involving reservations, water rights, fishing and hunting rights, tax issues and lawsuits; all of that I am very familiar with and am sympathetic and cooperative in terms of my interests in the problem we have here today.

I think that is also exemplified, Mr. Chairman, by the nature of the unique State from which I come, the religion which is practiced there, of which I am a member, and the history we have had in terms of the problems of the free exercise of that religion under the First Amendment. I bring that background as the basis upon which I testify.

Nevertheless, we do oppose Senate Bill 2250 and do not believe, in its present form, that it should be adopted by the Congress.

It appears to me after reading it carefully, that we have a very short, innocent and benign looking piece of legislation, Mr. Chairman, but in reality we are dealing with a major policy issue that, in my view, should be carefully examined.

The following are the concerns that we have:

First of all, in our opinion, the proposal is very vague in many respects. The language is unqualified and undefined. We believe that will ultimately provide administrative difficulty, even chaos in our Federal land management under the legislation.

In disagreement with some prior witnesses, I believe that this legislation places an effective veto power in the hands of native Americans over Federal land decisions in which they assert religious rights.

Thirdly, I believe it will create effective de facto property rights on Federal land for native Americans on the basis of religious claims.

Next, I believe that this piece of legislation will spawn litigation of dramatic numbers and complexity. One thing I think we need to resolve in this matter is less litigation and more accommodation and cooperation.

I also am of the opinion that it will injure the rights of non-Indian users of the Federal lands.

And finally, I am of the view that there is a serious problem of its violating the establishment clause of the First Amendment.

Let me just briefly elaborate on some of those points in order to save time. In terms of the veto power of which I mention—because only native Americans can say what their religion is and what religious practices they have, and because they claim literally tens of thousands of sacred religious sites on Federal lands, they are in the unique position to veto every and any activity on Federal land under this statute, which seriously impairs or interferes with that religious practice.

As pointed out in the *Lyng* case by the author of that opinion, no one is really in a position to decide what the religious practice is other than native Americans. No one will really be in a position to challenge that decision because they are the only individuals able to decide which non-Indian activities seriously interfere with their religious practices.

That injects into our public process, and the management of our Federal land resources, unpredictability and uncertainty. We believe that will have, as a practical effect, harmful interests on other users of Federal lands. And it will create a de facto property right on Federal land on the basis of Indian religion.

I spoke briefly of the establishment clause. By creating a special protected status and preferential treatment for Indian religions on Federal land not enjoyed by any other religion, S. 2250 will violate, in our opinion, the establishment test because the establishment clause violations as set forth in the Supreme Court decision in the *Lemon* case are these, Mr. Chairman:

A bill must have a secular purpose. Its primary effect must not be to advance or inhibit religion and it must not effectively entangle government with religion. Reading the Cranston bill, it seems to me that the establishment clause violation test set out in the *Lemon* case is clearly violated in all three of those particulars, as now proposed.

We see some enormous and some disruptive impact on the public lands throughout the country. This affects all Federal lands by definition; one-third of the country is Federal land. Most of it is out in the West. I am very familiar with the fact because my State is two-thirds owned by the Federal Government, and we rely upon those Federal lands for a major portion of our economic development and welfare. Clearly, they should not be given any special status; our view is that all of us need to be in the multiple use process together.

The enormous and all encompassing impact because of native Indian claims, as we read this statute, would become absolute—all encompassing. Let me give you an example, and I refer to the oft-quoted *Lyng* case which we have discussed so many times today. In that particular case, the Forest Service offered a 500-acre buffer zone around each of the undeveloped lands where sacred sites were identified by the Indian tribe. That was not satisfactory. They demanded in that situation 25 square miles to be reserved for them because their religious practice required privacy, silence and pristine wilderness practices. The Supreme Court called that a demand for "de facto ownership" of a large tract of Federal land, even though the Forest Service in that particular case, according to the Supreme Court, was solicitous in its efforts to try and solve that problem.

Another interesting example is a dispute between one native American group against another. That's the case on file here in the District of Columbia of the Navajo Hopi Land Dispute which started out as a claim for two religious sites in 1975 and has now grown in its number of claims to 81 religious sites.

In my testimony which I have placed into the record, Mr. Chairman, I have discussed the nature and the scope of existing statutes, regulations and agency policies and have indicated there is adequacy to meet the needs of the problem we face today by examining those statutes, regulations and policies and making sure that they meet the intent set forth therein.

I recognize that the Federal Agency Task Force back in 1979 evaluated and determined some problems. We have attempted over the nine-year period to take a look at the availability of solutions to that situation and find that, in addition to AIRFA adopted in 1978, that a number of Federal statutes have special provisions in them which assist in Indian and native Americans protecting their religious practices.

I recite only FLPMA and NEPA as examples of those statutes, but there are other Federal regulations, Federal land management, management plans, which in many instances have specific coverage for that purpose.

We conclude that S. 2250 should be carefully considered before any further action takes place. I make the following suggestions.

First of all, I believe that we need to do a great amount of homework. The fact is we need to know what the proposed bill's impact would have on Federal land management by absolute preference for native American religious interests. I don't believe we have carefully examined that question.

Second, I believe the bill's impact on productive and responsible development of the natural resources of the Federal land needs to be carefully examined.

We thirdly, need an up-to-date assessment of how existing statutes and regulations and policies are actually working. We have had testimony here today which indicates in some cases, it is not working so well. We've had some testimony where it seems to be working reasonably well. That needs to be carefully examined.

Fourth, we need to examine how, and to what extent, native Americans participate and are willing to cooperate by providing the factual information about those religious concerns.

Fifth, I believe we need some kind of a quantification analysis of just how many sites actually exist on the public lands. The question I would ask is: How big is the problem? I do not have an answer to that question.

Lastly, I believe that S. 2250 needs to have its constitutionality carefully examined.

I would suggest that a better approach than Senate Bill 2250 is a multiple use accommodation of interests and cooperation among the parties.

I firmly believe that every participant in using the public lands is entitled to a seat at the public table and available to participate in establishing the policies which make up that multiple use concept. Certainly, the native Americans deserve a full seat at that table.

One example of how that might work, Mr. Chairman, is the legislation which was adopted last December 31 by the Senate involving Public Law 100-225 which is the establishment of a monument down in New Mexico where the language provides, "nonexclusive access to the monument and conservation area by Indian people for traditional cultural and religious purposes." That passed the Senate and was signed on December 31, 1987, Mr. Chairman.

That concludes my presentation.

Thank you for the opportunity to testify, Mr. Chairman.

[Prepared statement of Mr. Matheson appears in appendix.]

The CHAIRMAN. Governor Matheson, I thank you very much for your testimony. As an advocate of your cause, you have done very well. I will try my best to be an advocate of this bill.

You indicated that this may be an innocent and benign legislation which may have major policy ramifications. Let me assure you, sir, that it was not intended to be an innocent and benign bill. We consider this a major bill of hopefully, important impact upon the policies of this country.

First of all, it was intended to fortify what we consider to be a very important right which we all assume is protected by our constitution.

In coming forth with this legislation, those of us who placed our names on the measure, are very cognizant of the history that brought about the necessity for this. It was not just the *Lyng* case that made it necessary for S. 2250 to be drafted. We were aware, for example, that in the past 200 years, as sovereign countries, the sovereign United States and sovereign tribes have entered into 800 treaties. Treaties are very important to the United States; we are debating one right now.

We are always concerned about other countries failing to live up to the provisions of the treaty, even those that have not been ratified. The big debate is on SALT II, a treaty that we have not yet ratified, although but we accuse the Russians of not living up to its provisions.

It may interest you to know that of the 800 treaties, the United States Senate ignored 430 of them. As part of the record, we just filed these treaties. But, we required the Indians to live up to their promises as set forth in these unratified treaties, 430 of them. However, we did ratify 370 of them. Of the 370, we were very consistent. We violated provisions in every one of them.

I think, knowing that, one can understand why 200 years ago, we recognized the sovereignty and title to over 300 million acres of land, and the Indians find themselves with only 50 million acres today.

So when one speaks of accommodation, one must, I think, recall and agree that the Indians have done much to accommodate our concerns, the non-Indian concerns and our needs and our sensitivities.

As to the matter of the Indians being entitled to a full seat at the table, I quite agree with you, sir. The only trouble is that we have had laws that set forth these tables, consultation and notification. I think, as the Professor has indicated, as a former Governor, you would have to admit that on many many occasions notification is given when the decision is already made, consultation is just for the exercise and that is not a full seat. What we are trying to do is to make certain that the Indians will get a full seat at the table of multiple use.

I think the record will show that up until now the vast majority of cases involved have been resolved by accommodation. Usually the Indians get the short end of the deal, but they have accommodated, and have not gone to the courts until they felt that was the only recourse.

As to your concern that the Indians would have a veto because, in essence, the Indians would determine and define their religion, I have always felt that the practitioners of a given religion are the only ones who probably qualify to define their religions.

For example, I don't think the Government of the United States can define Catholicism. I think the Pope and the Cardinals will define what their religion is all about. I don't think we can make laws that can abridge the rights of Buddhists; they define what they consider to be their laws. The same thing with the followers of the faith of Islam. And I see nothing wrong in those who practice the religion—the native traditional religion—to be able to define their religions.

I notice you also spoke of the vagueness of the religion. Our first witness, Mr. Robison talked about the mystery and the vagueness and the secrecy. But none of us would criticize the vagueness or the mystery or the secrecy of your religion, nor would they question my religion; I happen to be a Protestant. Nor would they question what happens in the secrecy of the closed doors when the Cardinals meet, or the secrecy of the sanctum sanctorum of your religion.

I would hope that we would consider in all seriousness, the statement that was made by Monsignor Lenz. I think he was able to very candidly define what we Americans have been doing in not recognizing and respecting the religions of our native Americans.

Having said that, let me assure you that after this hearing, we will not just pass this measure. We are sensitive to the Constitutional questions involved. We are also concerned that this measure may not carry out the full intent of the author of the measure. So, I can assure you that this is a serious bill, intended to be a measure of policy-making. We will give that bill the proper treatment that I think it requires.

We will be calling upon you for your expertise and your contribution. We will be calling upon the attorneys of Indian nations and tribes for the same sort of input. I don't think anyone considers S. 2250 to be a finished product. It is too important to be treated cavalierly. I can assure you that this committee will not only seriously consider this, but will be passing legislation which we feel is necessary at this time in our history to assure our native Americans that they too have the right to pray and worship as they wish.

With that, I thank you very much, sir.

Mr. MATHESON. Thank you very much for giving me the opportunity. May I reconfirm that we are anxious to be helpful and cooperative and try and find the solution.

The CHAIRMAN. Thank you, sir.

We have the testimony of Mr. William Means and without objection it will be made part of the record.

[Prepared statement of Mr. Means appears in appendix.]

[Whereupon at 11:40 a.m., the committee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF ROLAND G. ROBISON, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 2250, A BILL "TO ENSURE THAT LANDS ARE MANAGED IN A MANNER THAT DOES NOT IMPAIR THE EXERCISE OF TRADITIONAL AMERICAN INDIAN RELIGION".

I appreciate the opportunity to appear before the Committee today to discuss the views of the Department of the Interior on S. 2250.

S. 2250 would amend Public Law 95-341, the Joint Resolution on American Indian Religious Freedom, by adding a new section 3 to provide that, except in cases involving compelling governmental interests of the highest order, Federal lands which have been historically indispensable to a traditional American Indian tradition shall not be managed in a manner that would seriously impair or interfere with the exercise or practice of such traditional American Indian religion. Section 3(b) would give United States District Courts jurisdiction to enforce the provision.

Although we are appreciative of the rights of American Indians to exercise their religion, we strongly oppose enactment of S. 2250.

Section 2 of the American Indians Religious Freedom Act required the President to direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices.

We believe that Federal agencies are respecting the intent of the American Indian Religious Freedom Act.

For instance, BLM's regulations require coordination with and meaningful involvement of Indian Tribes in the development of resource management plans. Indian Tribes are given opportunities to review plans, are notified of intentions to amend plans and suggest topics and issues.

BLM assures that its programs are consistent with programs of Indian Tribes as long as they remain consistent with Federal laws and regulations.

The provision that S. 2250 would add to the American Indian Religious Freedom Act would impose very strict limitations on the exercise of Federal agency mandates and goes far beyond what is required by section 2 of the American Indian Religious Freedom Act. In addition, it is questionable that it would accomplish what we believe is its purpose.

The wording of section 3(a) is vague and unworkable. Specifically, terms such as "compelling governmental interests of the highest order", "historically indispensable", and "seriously impair or interfere with" are subject to a great variety of interpretations. There are no finite standards on which to weigh land management decisions against American Indian religious exercises, nor is there any indication of where these religious sites are located. We cannot even estimate how much Federal land would be subject to the requirements of this bill.

We object to the provision that authorizes bypassing the administrative process and remedies, and allows a case to be taken to the Federal District Courts directly. It provides no possibility of resolution of an issue without the necessity for court action. In addition, as the provision is written, it would seem to give no avenue of relief to persons who may object to the manner in which the provision is proposed to be enforced.

If S. 2250 is enacted, it would severely curtail the ability of the various land management agencies to carry out the congressional mandates under which they operate. The basic premise of the bill appears to be that religious use of Federal lands should be the primary use of those lands. Furthermore, the only exception to the bill - cases involving compelling governmental interests of the highest order - would seem to apply only to activities relating to the national defense of the United States.

Recently the Supreme Court, in the case of Lyng, Secretary of Agriculture, et al. v. Northwest Indians Cemetery Protective Assn., et al., held that the American Indian Religious Act does not create any legal rights that can be enforced against Federal agencies. That case related to the construction of a paved road through Federal land, including the Chimney Rock area of the Six Rivers National Forest, which was used by certain American Indians for religious rituals that depend upon privacy, silence and an undisturbed natural setting. In its decision, the court said "Whatever rights the Indians may have to the use of the area, however, those rights do not divest the government of its right to use what is, after all, its land".

In summary, S. 2250 is vague and unclear, and may go far beyond the issue it is intended to address. We, therefore, strongly oppose it.

This concludes my statement. I will be pleased to answer any questions that you may have.

TESTIMONY OF SENATOR ALAN CRANSTON

BEFORE

THE SELECT COMMITTEE ON INDIAN AFFAIRS

MAY 13, 1988

MR. CHAIRMAN, I AM PLEASED TO BE HERE TODAY TO SPEAK IN SUPPORT OF S. 2250, A PROPOSED AMENDMENT TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT WHICH I INTRODUCED ON MARCH 31, 1988. I DEEPLY APPRECIATE THE CHAIRMAN'S SWIFT ACTION IN SCHEDULING THIS HEARING TODAY.

S. 2250 PROPOSES TO STRENGTHEN THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT BY REQUIRING FEDERAL AGENCIES TO MANAGE FEDERAL LANDS IN A MANNER THAT DOES NOT SERIOUSLY IMPAIR OR INTERFERE WITH THE EXERCISE OR PRACTICE OF TRADITIONAL AMERICAN INDIAN RELIGION. IT WOULD FURTHER PROVIDE UNITED STATES DISTRICT COURTS WITH THE AUTHORITY TO ISSUE SUCH ORDERS AS MAY BE NECESSARY TO ENFORCE THIS REQUIREMENT.

TEN YEARS AGO CONGRESS ENACTED THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT WHICH SETS FORTH THE POLICY OF THE UNITED STATES TO PROTECT AND PRESERVE FOR AMERICAN INDIANS, ESKIMO, ALEUT, AND NATIVE HAWAIIANS, THEIR INHERENT RIGHT OF FREEDOM TO BELIEVE, EXPRESS, AND EXERCISE THEIR TRADITIONAL RELIGIONS.

PURSUANT TO ITS PROVISIONS, FEDERAL AGENCIES ARE REQUIRED BY LAW TO RESPECT THE CUSTOMS, CEREMONIES AND TRADITIONS OF NATIVE

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AMERICAN RELIGIONS. THE ACT ALSO PROVIDED THAT WITHIN ONE YEAR OF ENACTMENT, FEDERAL AGENCIES WOULD BE REQUIRED TO EXAMINE THEIR POLICIES AND PROCEDURES, AND WORK WITH NATIVE TRADITIONAL AND TRIBAL LEADERS TO ASSURE MINIMAL INTERFERENCE WITH THE RELIGIOUS PRACTICES OF INDIAN PEOPLE.

IN AUGUST OF 1979, THE FEDERAL AGENCIES TASK FORCE CHARGED WITH THIS RESPONSIBILITY SUBMITTED ITS REPORT TO CONGRESS. THAT REPORT CONCLUDED THAT DUE TO IGNORANCE AND ATTITUDES, FEDERAL POLICIES AND PRACTICES WERE DIRECTLY OR INDIRECTLY HOSTILE TOWARD NATIVE TRADITIONAL RELIGIONS OR SIMPLY INDIFFERENT TO THEIR RELIGIOUS VALUES. THE REPORT FOUND THAT NATIVE AMERICAN PEOPLE WERE DENIED ACCESS TO SACRED SITES ON FEDERAL LAND FOR THE PURPOSE OF WORSHIP AND IN CASES WHERE THEY DID GAIN ACCESS, THEY WERE OFTEN DISTURBED DURING THEIR WORSHIP BY FEDERAL OFFICIALS AND THE PUBLIC. IN ADDITION, SOME SACRED SITES WERE NEEDLESSLY PUT TO OTHER USES WHICH DESECRATED THEM. ALTHOUGH THE VARIOUS RECOMMENDATIONS REGARDING LEGISLATIVE ACTION WENT THROUGH A REVIEW PROCESS UNDER THE CARTER ADMINISTRATION, NO ACTION WAS TAKEN TO REMOVE BARRIERS TO INDIAN RELIGIOUS FREEDOM IDENTIFIED IN THE 1979 REPORT.

IN 1982, OVERSIGHT HEARINGS CONDUCTED BY MY FELLOW CALIFORNIAN, REPRESENTATIVE DON EDWARDS, CHAIRMAN OF THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE HOUSE JUDICIARY COMMITTEE REVEALED THAT ABUSES OF THE RELIGIOUS FREEDOM RIGHTS OF NATIVE AMERICANS CONTINUE DESPITE THE POLICIES DELINEATED IN THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT.

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TEN YEARS HAVE PASSED SINCE PASSAGE OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT. YET, FEDERAL LAND MANAGEMENT POLICIES REMAIN INSENSITIVE TO INDIAN RELIGIONS AND CULTURAL TRADITIONS, AND AMERICAN INDIANS LACK A MECHANISM TO ENFORCE THEIR RIGHTS TO RELIGIOUS FREEDOM.

CONGRESS MUST TAKE AFFIRMATIVE STEPS TO HALT THE INCREASING INFRINGEMENT ON THE RELIGIOUS PREROGATIVES OF AMERICAN INDIANS. I BELIEVE IT IS IMPERATIVE THAT WE ESTABLISH A CLEAR STANDARD OF REVIEW TO GUIDE THE COURTS IN INTERPRETING THE PURPOSE AND POLICIES OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT. S. 2250 WOULD PROVIDE THIS MUCH NEEDED STANDARD OF REVIEW. IT WOULD MAKE THE RIGHTS OF PRACTITIONERS OF TRADITIONAL AMERICAN INDIAN RELIGIONS UNDER THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT ENFORCEABLE IN COURT.

TEN YEARS AGO, CONGRESS MADE A COMMITMENT TO PROTECT THE RIGHTS OF AMERICAN INDIANS TO PRACTICE THEIR TRADITIONAL RELIGION. WE MUST MAKE SURE THOSE RIGHTS ARE A REALITY. I LOOK FORWARD TO WORKING WITH YOU, MR. CHAIRMAN, THE MEMBERS OF THE COMMITTEE, AND OTHER INTERESTED PARTIES, TO INSURE THAT THE RIGHTS OF INDIAN PEOPLE TO PRACTICE THEIR TRADITIONAL RELIGION WITHOUT THE INTERFERENCE OF GOVERNMENTAL AGENCIES -- RIGHTS TAKEN FOR GRANTED BY MOST OTHER AMERICANS -- ARE ADEQUATELY PROTECTED. THANK YOU.

SENATOR DENNIS DeCONCINI

STATEMENT

ON

S. 2250,

A BILL TO AMEND THE AMERICAN INIDAN RELIGIOUS FREEDOM ACT

I WANT TO COMMEND MY DISTINGUISHED COLLEAGUE, THE SENATOR FROM CALIFORNIA, FOR HIS LEADERSHIP ON AN ISSUE WHICH IS VERY IMPORTANT TO NATIVE AMERICAN PEOPLE - THE RECOGNITION OF THEIR RIGHT AND FREEDOM TO PRACTICE THEIR RELIGION ON LANDS MANAGED BY THE FEDERAL GOVERNMENT. LIKE ANYTHING ELSE, THE ABILITY OF A COMMUNITY OF PEOPLE TO LIVE TOGETHER DEPENDS ON THE EXTENT TO WHICH THEY CAN MUTUALLY ACCOMODATE EACH OTHERS' DEEPLY HELD BELIEFS. WHEN THIS DOES NOT HAPPEN ON ITS OWN THEN THERE IS THE VERY DIFFICULT TASK WHICH SOMEONE MUST ASSUME TO BRING THE PARTIES TOGETHER TO FIND A WAY TO ACHIEVE MUTUAL ACCOMODATION. IN THIS CASE, THAT SOMEONE IS THE SENATOR FROM CALIFORNIA. I AM COMMITTED TO WORKING WITH HIM ON FINDING A WAY TO ACHIEVE THIS MUTUAL ACCOMODATION BETWEEN THE NATIVE AMERICAN COMMUNITIES, THE NON-INDIAN COMMUNITY AND THE FEDERAL LAND MANAGMENT AGENCIES.

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THIS WILL MEAN PROVIDING MEANINGFUL GUIDANCE TO THE AGENCIES ON THIS MATTER. THE GUIDANCE WE HOPE TO GIVE WILL BE CONSISTENT WITH OUR POLICY OF ENSURING THE MULTIPLE USES OF FEDERAL LANDS. NO ONE INTENDS TO LIMIT THE USES OF THESE LANDS TO ONE SINGLE EXCLUSIVE USE. WE WILL NEED TO FIND A WAY TO BALANCE ALL THE INTERESTS AND MAKE SURE THAT IN DOING SO THAT THE NATIVE AMERICAN RELIGIOUS PRACTICES ARE INCLUDED. I KNOW THAT MANY OF THE LAND MANAGERS AND USERS OF FEDERAL LANDS IN MY STATE HAVE GENERALLY DONE THE BEST THEY CAN TO BE SENSITIVE TO THESE CONCERNS. SOME HAVE SAID THAT THE CONSIDERATION OF THE NATIVE AMERICAN INTERESTS NEEDS TO BE DONE EARLIER IN THE PROCESS OF PLANNING FOR THE USE AND MANAGEMENT OF THESE LANDS. THAT IS WHAT I WOULD LIKE TO SEE. I INTEND TO WORK WITH ALL THE PARTIES TO FIND THE BEST WAY TO ACCOMPLISH THIS. I HOPE THAT EVERYONE WILL COME FORWARD AND ASSIST US.

I LOOK FORWARD TO THE TESTIMONY AND INPUT OF EVERY ONE HERE TODAY.

May 18, 1988

My name is Monsignor Paul A. Lenz, Executive Director of the Bureau of Catholic Indian Missions, Washington, D.C. Father Ted Zuern, S. J., pastor of St. Isaac Joques Parish/Mother Butler Center, Rapid City, South Dakota, is the Associate Director of the Bureau of Catholic Indian Missions for legislation. This statement has been researched by him. I want to make it clear at the outset that we support S. 2250, which was introduced by Senator Cranston.

S. 2250 is an amendment to the 1978 American Indian Religious Freedom Act. It ensures that Federal lands are managed in a manner that does not impair the exercise of traditional American Indian religions. It specifically places all Federal property under mandate to be managed in a way that does not impair a traditional American Indian religion exercise in areas that have been historically indispensible to rituals and rites.

To many Americans knowledge of any religion outside the bounds of the Judeo-Christian tradition or the Muslem tradition is minimal at best. It is not taken seriously. It is never given the respect that it deserves. It is something that people follow for lack of anything else to believe.

We must always realize that the American Indians were a very spiritual people, probably more spiritual than we are today. In our age we have so many benefits of science to provide conveniences for us that we do not realize how ultimately we are dependent on the basic provisions that God gives to us in this life. The American Indians of this country achieved remarkable heights of development in some few instances, but for the most part lived lives close to the elements and with little conveniences. They lived a life close to God, or the Great Spirit, or the Great Mystery, as they called him in their own tongues.

The American Indians were a people of prayer. They allowed most of the actions of their lives to be blessed by the utterance of a prayer to the Great Creator of all things. They lived a life that interjected prayer into so many of their actions. Unlike Christians or Jews or Muslems they did not need a church or synagugue or mosque for their prayers. They had the whole realm of God's creation. They worshipped outdoors. They were close to their Creator. They were surrounded by the gifts that he gave them.

They were liturgists. Their sense of appropriate actions united with song of all nations and stillness of silence or with the spoken word, were part of the worship they gave to the Great Spirit. They included dance in their worship. It was a very prominent part of their liturgy. Sometimes they used horses in carrying out their actions of prayer, of worship, of their liturgy. With our strict traditions we never allowed dancing in the worship of God. We found it was not respectful, not becoming to so great a being. The American Indians found all graceful actions to be worthy of a part in the liturgy, in the worhip of the Almighty Creator.

The graceful movement of their bodies satisfied themselves and all who looked on in reverence. Their whole physical being pulsed with the act of adoration as they moved in rhythm of the dance. We must not look on dancing as something that is totally removed from worship. The Indians with their Theology of Creation used all things to worship God. Their whole being was employed in the act of worship. It was not a rite of pagan excess; it was a rite of human worship. It is something that most Americans have never understood, nor in which they participated. It is a response to the Great Creator, the One Who Gives All.

Before Columbus came to this hemisphere, American Indians worshiped God. It had none of the accepted ceremonies of Judaism, Christianity or Muslem traditions. But, it was a true worship. There are many accounts of revelation to tribes to direct them in their rituals and rites. American Indians had only the experiences that were known to them. They were profoundly reverent and respectful in all they did in their worship. They worshiped God in the only way they could with the full exercise of their bodies, with songs, with silence, with liturgy that might make us pause in wonder at the reverent way it was performed. We are not of that tradition, and we are caught in our inability to fully understand the sincerity with which they publicly worshiped God.

Probably in the worship of God, which is at the heart of every culture, we are most different from people of another culture. Something that is most sacred to us, is the very point at which we look askance on those of other cultures. But, it is at this very point that we have the greatest unity with those of other cultures. Respect for the worship of others, even when it differs considerably from the patterns of worship we know, is the surest sign of our maturity in a culture. We must feel at ease in our own culture, but we must also feel respect for the cultures of other peoples, especially the American Indian who at such a great price welcomed our ancestors to this land. We are not here by any right of our own. This whole country belonged to the American Indians before our ancestors took it by force.

How unthoughtful it is for us to disregard the religious practices of the American Indians and suspect that they performed pagan rituals that were to be merely tolerated, at our best response. The American Indians were very sincere in worshiping God according to their traditions. We should not consider beneath us what is not of our tradition. In the first amendment the free exercise of religion clause is composed in terms of what the government cannot do to the individual. It is not an expression of what the individual can extract from the government. Surely, the American Indians join all of us in the right to have the Federal Government acknowledge their right to worship God according to the dictates of their consciences. One of their basic rights as American citizens is the right to the practice of their religion.

American Indians accepted all people into their land. Those people placed in their charter of government the freedom that all persons have to worship God in their own way. That guarantee must extend to the American Indians above all others. There should not be any need for Senator Cranston to introduce S. 2250. It should be readily understood, but it is not. So, the American Indian Religious Freedom Act of 1978 must be amended to include all the federal land that this nation owns. Where that land is used by American Indians in their rituals and rites of worship, nothing should be done to deprive them of that right. All of us would be better men and women if we recognized what they are doing, worshiping God rather than performing some strange ceremony which we see as a curiosity. The expression of a people who humbly perform in the open air, removed from all human habitation, their worship of almighty God is always deserving of respect from other people, especially those who have benefitted so deeply from the American Indians.

I think it appropriate that Father Zuern and I, as Catholic priests, make a petition for the American Indians in the use of land for their worship of our Creator. They use the areas away from the beaten track. They perform liturgical rituals that are elaborate and extensive. The fact that they do not perform in a church, synagogue or temple does not make their ritual any less valid.The fact that they dance does not take away from their liturgical prayer. They perform a public act of worship that is equal to that of any religion.

If all religions do not stick together and support the acts of worship performed by each other we run the risk of having all-out acts of worship hampered by the government for one reason or another. An attack on one religion is an attack on all religions. American Indians need the right to perform their act of worship, to express their inner feelings to God. If they are denied that right, all religions are in danger of being denied that right.

We urge you to support S. 2250.

Monsignor Paul A. Lenz
Father Ted Zuern, S.J.

Native American Rights Fund

TESTIMONY OF STEVEN C. MOORE, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 2250 A BILL TO AMEND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978.

MAY 18, 1988

A. INTRODUCTION

Mr. Chairman and members of the Committee, I am indeed honored to testify before the Senate Select Committee on Indian Affairs on S. 2250, a bill to amend the American Indian Religious Freedom Act of 1978, Pub. L. 95-341, 42 U.S.C. §1996 (AIRFA).

Since its inception in 1971, the Native American Rights Fund has been committed to the preservation of religious freedom for American Indians. It was indeed more than a decade ago that three of my colleagues at the Native American Rights Fund - Suzan Shown Harjo, Walter Echo-Hawk and Kurt Blue Dog - worked with members of Congress and their staffs to create the original bill which ultimately became AIRFA. These same individuals also participated in a series of nationwide public hearings where Indian people testified concerning the religious persecution they faced because of existing federal laws and policies which advertently or inadvertently interfered with the practice of their traditional religions. Ms. Harjo and Mr. Echo-Hawk testified in June of 1982 before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee which held oversight hearings on AIRFA enforcement matters.

In addition to their work relating to AIRFA, NARF staff members have been involved over the past 18 years in litigation in numerous state and federal forums, and before numerous administrative agencies, advocating for the religious free exercise rights for Indian people. Such advocacy extends to Native Americans incarcerated in Federal and state correctional institutions; challenges to mineral, waterpower timber and other natural resource development on public lands which threatens Indian sacred sites; the protection of Indian gravesites discovered on state or Federal lands; and efforts to secure repatriation and reburial of the remains of Indian ancestors now stored in state and Federal museums and other institutions. Most recently I had the honor of authoring an amici curiae brief in the Supreme Court case of Lyng v. Northwest Indian Cemetery Protective Association, which will form the basis of much of my comments.

I first wish to extend my heartfelt appreciation for the courage and determination demonstrated by Senators Cranston, Inouye and DeConcini by introducing S. 2250 to amend AIRFA. S. 2250 concerns only the subject of Indian religious infringement in the management of Federal lands; thus my remarks today will be limited to that subject.

B. LYNG V. NORTHWEST INDIAN CEMETERY PROTECTIVE ASSOCIATION

One month ago on April 19, 1988, the United States Supreme Court handed down its decision in Lyng v. Northwest Indian Cemetery Protective Association (No. 86-1013). Lyng involved the challenge by members of three northern California Indian tribes of a decision by the United States Forest Service to construct a road (commonly referred to as the "G-O Road") and related development activities through a sacred area in the Six Rivers National Forest known as the "high country". The Indians have for centuries used the high country for vision questing and other ceremonial and ritual purification purposes. After an extensive investigation of the ethnographic literature on the Yurok, Karok and Tolowa Indians and scores of interviews of primary Indian religious informants, the Forest Service's own expert anthropologist, Dorothea Theodoratus, concluded that the proposed land development activities would destroy the "very core" of their religious beliefs and practices. Theodoratus recommended that no road be built. 1/

Notwithstanding the recommendations of its own expert witness, Forest Service officials decided to proceed with construction of the road at one of several alternative sites. These bureaucrats thus deliberately ignored the factual evidence before them and determined that certain mitigative practices would suffice to ameliorate the harm to the Indians'

1/ The Advisory Council on Historic Preservation, responsible for enforcement of Section 106 of the National Historic Preservation Act, 16 U.S.C. §§470w et seq., vehemently opposed the project on essentially the same grounds as those identified by Theodoratus.

religion. They simply refused to believe the Indians' claims. [2]

After a lengthy hearing on the Indians' motion, the federal district court in Northern California in 1983 permanently enjoined the Forest Service from constructing the G-O Road, on constitutional and Federal environmental statutory grounds. The court applied the traditional test articulated under the free exercise clause of the first amendment to the Constitution and held that the proposed activities impermissibly burdened the Indians' religious free exercise rights and, moreover, the perceived government interests in development of the G-O Road were grossly speculative and insufficient to outweigh the Indians' interests. See Northwest Indian Cemetery Protective Assn. v. Petersen, 565 F.Supp. 586 (N.D. Cal. 1983).

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[2] Sioux Indians from South Dakota recently experienced similar treatment from James Mathers, Forest Supervisor of the Black Hills National Forest. Mathers denied their application for a special use permit to construct a spiritual encampment in the forest, despite the pre-existence of several Christian church camps and a country club in the same forest. A federal district court judge admonished Mathers for his "clear error of judgment."

> In summary, the Court specifically finds the denial of the special use permit was arbitrary and capricious. The Court further finds that Forest Service policies as implemented by Mr. Mathers - including his decision to deny the special use application - have the effect of discriminating against Indians who are trying to practice their religion. The Court further finds that Mr. Mathers is subconsciously biased against Indian applicants. He acknowledges that Indian people should be treated equally. . . but just cannot bring himself to see that that happens.

United States v. Means, 627 F.Supp. 247, 269 (D.S.D. 1987).

In 1984 Congress set aside as wilderness, thereby removing from the controversy much of the disputed land, via the California Wilderness Act, Pub.L. No. 98-425, 98 Stat. 1619, in part because of the area's Native American cultural and religious importance. Congress was aware of the on-going legal dispute and, out of deference to the judicial branch, excepted a 1200 foot wide corridor through the forest from wilderness designation for possible construction of the G-O Road. The Ninth Circuit Court of Appeals upheld the lower court's permanent injunction of the road's construction on constitutional free exercise grounds twice, first in 1985 and again on rehearing in 1986. See Northwest Indian Cemetery Protective Assn. v. Petersen, 795 F.2d 688 (9th Cir. 1986).

1. First Amendment Free Exercise Right Rejected.

The Supreme Court reversed the decision of the Ninth Circuit on several grounds. First, it held that the free exercise clause of the first amendment does not bar the Federal government from conducting activities on public lands which violate the Indians' religion. The Court ruled that Lyng was controlled by its earlier decision in Bowen v. Roy, 476 U.S. 693 (1986). Roy held that a federal statute requiring states to use Social Security numbers did not violate Indian religious rights under the free exercise clause. Slip. Op. at 7-10. In Roy the Court reasoned that an individual through the first amendment could not block the government's conduct of its own internal affairs; it found the government's use of a Social Security number for administrative, recordkeeping purposes to be purely internal in nature. Legal disputes involving decisions by Federal land management agencies concerning land considered sacred to Indians, such as Lyng, are in the Court's opinion indistinguishable from Roy, involving nothing more than the government's internal affairs. Slip Op. at 7-10.

Justice Brennan, writing a dissenting opinion joined by Justices Marshall and Blackmun, criticized the majority for its inability to distinguish the facts in Lyng from Roy, calling that inability "remarkable". Brennan emphasized that Congress was well aware of the difference in 1978 when it enacted AIRFA:

> Federal land-use decisions, by contrast, are likely to have substantial external effects that government decisions concerning office furniture and information storage obviously will not,. . . . (AIRFA is) an express congressional determination that federal land management decisions are not "internal"

> government "procedure", but are instead governmental actions that can and indeed are likely to burden Native American religious practices. Slip. Op. at 13-14 (Dissent).

Justice Brennan also noted that in Roy the government's recordkeeping system did not impair the exercise of one's religion; in contrast, construction of the G-O Road would impair the Indians' "freedom to exercise their religion in the greatest degree imaginable." Id. at 15.

2. "Effects" Test Rejected.

The Court in Lyng, however, did not stop there. As a second basis for the reversal it rejected what is known as the "effects" test, which essentially directs courts to assess the effect of government conduct on the religious free exercise rights of individuals.

> Whatever may be the exact line between unconstitutional prohibitions on the free exercise of religion and the legitimate conduct by government of its own affairs, the location of the line cannot depend on measuring the effects of a government action on a religious objector's spiritual development. Slip. Op. at 10 (emphasis added).

The rejection of the "effects" test represents a significant departure from well-established precedent. See, e.g. Sherbert v. Verner, 374 U.S. 398, 404 (1963) (a law is constitutionally invalid if its "purpose or effect" is to "impede the observance" of religion); Walz v. Tax Commission, 397 U.S. 664 (1970); Wisconsin v. Yoder, 406 U.S. 205, 220 (1972); Thomas v. Review Board, 450 U.S. 707, 717 (1981); Hobbie v. Unemployment Appeals Commission, 480 U.S. ____, 94 L.Ed.2d 190, 197 (1987).

In lieu of the "effects" test, the Court adopted a crabbed, wooden interpretation of the free exercise clause which limits the scope of cognizable free exercise claims against the government to circumstances where

> individuals [would] be coerced by the Government's action into violating their religious beliefs; . . . [or penalized by being denied] . . . an equal share of the rights, benefits and privileges enjoyed by other citizens. Slip. Op. at 8 (emphasis added).

To further draw out the distinction between impermissible and permissible government action the Court provided the following guidance:

> This does not and cannot imply that _incidental effects of government programs_, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, require government to bring forward a compelling justification for its otherwise lawful actions. Slip. Op. at 10 (emphasis added).

The Court necessarily had to attempt to articulate a principled difference between "indirect coercion or penalties on the free exercise of religion", and "incidental effects of government programs." Forms of "indirect coercion," the Court recognized in keeping with precedent, are subject to First Amendment scrutiny; "incidental effects," following _Roy_ and now _Lyng_, are not. Citing the diverse nature of our society, and the possibility that _any_ government action might offend the religious sensibilities of some individual or sect, the Court sidestepped these admittedly difficult cases and dumped them off on Congress. _Id_. at 10.

In dissent Justice Brennan minced no words concerning the Court's rejection of the effect's test. Much of the text of this portion of his opinion is quoted at length to give the reader a full sense of the strength and persuasiveness of his reasoning:

> I thus cannot accept the Court's premise that the _form_ of the Government's restraint on religious practice, rather than its _effect_, controls our constitutional analysis. . . . [C]onstruction of the G-O road . . . will virtually destroy respondents' religion, and will necessarily force them into abandoning those practices altogether. Indeed, the Government's proposed activities will restrain religious practice to a far greater degree here than in any of the cases cited by the Court today.
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> * * *
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> Ultimately, the Court's coercion test turns on a distinction between governmental actions that compel affirmative conduct inconsistent

> with religious belief, and those governmental action's that prevent conduct consistent with religious belief. *In my view, such a distinction is without constitutional significance*. The crucial word in the constitutional text. . . is "prohibit", . . . a comprehensive term that in no way suggests that the intended protection is aimed only at governmental actions that coerce affirmative conduct. *Nor does the Court's distinction comport with the principles animating the constitutional guarantee: religious freedom is threatened no less by governmental action that makes the practice of one's chose faith impossible than by governmental programs that pressure one to engage in conduct inconsistent with religious beliefs*.
>
> * * *
>
> Both common sense and our prior cases teach us, therefore, that governmental action that makes the practice of a given faith more difficult necessarily penalizes that practice and thereby tends to prevent adherence to religious belief. The harm to the practitioners is the same regardless of the manner in which the Government restrains their religious expression, and *the Court's fear that an "effects" test will permit religious adherents to challenge governmental actions they merely find "offensive" in no way justifies its refusal to recognize the constitutional injury citizens suffer when governmental action not only offends but actually restrains their religious practices.* Slip. Op. at 10-12 (Dissent, footnote ommitted).

3. *Unanimity and Certainty Required*.

Like the decision of the Forest Service to build the G-O road over the objections of the Indians *and* its own expert anthropologist, the Supreme Court's decision in *Lyng* is simultaneously offensive and paternalistic. Like the Forest Service bureaucrat, five members of the Court with Justice O'Connor as spokesperson found the Indians' claims simply too incredible to believe, notwithstanding the admonition that a court is not in a position to "determine the truth of the underlying beliefs that led to the religious objections. . ."

Slip. Op. at 9. Justice O'Connor described the Theodoratus Report as "so sympathetic" that it constituted the Indians' primary evidence of religious infringement, ignoring the fact that much of Dr. Theodoratus' conclusions derived from primary data drawn from interviews with scores of Indian religious practitioners. Id. at 13.

Moreover, the Court conveniently seized upon what it thought was a lack of unanimity in the record concerning religious impacts, as a basis for discrediting the Indians' claims:

> To be sure, the Indians themselves were far from unanimous in opposing the G-O road, see App. 180, and it seems less than certain that construction of the road will be so disruptive that it will doom their religion. Slip. Op. at 11 (emphasis added).

Two criticisms of the Court's reasoning are in order. First, free exercise precedent does not require unanimity of belief. See, e.g., Thomas v. Review Board, supra, 450 U.S. at 715 ("Intrafaith differences . . . are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences . . . "). Second, where is it stated that proof of certainty of the destruction of one's religion is required as prerequisite to triggering the protections of the free exercise clause? The Court itself has noted that

> If judicial inquiry into the truth of one's religious beliefs would violate the free exercise clause, an inquiry into one's reasons for adopting those beliefs is similarly intrusive. So long as one's faith is religiously based at the time it is asserted, it should not matter, for constitutional purposes, whether that faith is derived from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible. Hobbie, supra, 94 L.Ed.2d at 199, n.9, quoting Callahan v. Woods, 658 F.2d 679, 687 (9th Cir. 1981).

In Hobbie the State of Florida attempted to argue that Paula Hobbie's claims to unemployment compensation for being hired to work on Saturday, her Sabbath, were unfounded because she converted to the Seventh Day Adventist faith after entering into a contract of employment. One of Florida's purported interests was in preventing fraud on its unemployment compensation fund by individuals feigning new-found religiosity or spirituality. The Supreme Court rejected such a notion by an 8-1 vote. "The First Amendment protects the free exercise rights of employees who adopt religious beliefs or convert from one faith to another after they are hired." Hobbie, supra, 94 L.Ed.2d at 199. In clear contrast to Thomas and Hobbie, the Court in Lyng regarded the Indians' religious claims as inferior by imposing a higher standard of factual proof. Why the singling out of Indian religion for disparate treatment? I honestly and sincerely doubt that the religious claimants in Yoder, Sherbert, Thomas and Hobbie could have met such a rigorous proof standard.

4. Rejection of Centrality-Indispensability.

In the decision below the Ninth Circuit Court of Appeals adopted what has become known as the "centrality-indispensability" standard: as a prerequisite to establishing a "burden" on religion under the first prong of the free exercise test Indians were required to prove that a physical site was central and indispensable to religious practice. The Ninth Circuit relied on earlier decisions in Indian sacred site cases from the Sixth Circuit and District of Columbia Circuit which interpreted the test as requiring Indians to prove that religious ceremonies were practiced at a particular site which could be performed nowhere else. See Sequoyah v. TVA, 620 F.2d 1159 (6th Cir.), cert. denied, 449 U.S. 953 (1980); and Wilson v. Block, 708 F.2d 735 (D.C. Cir.), cert. denied, 464 U.S. 456 (1983).

Because the majority in Lyng denied the existence of Indians' first amendment rights altogether, it was unnecessary to discuss the functional utility of the centrality-indispensability standard. The majority, however, referred to the standard in response to Brennan's dissent, which criticized the Court for turning the "difficult task" of balancing "competing and potentially irreconcilable interests" over to Congress. Slip. Op. at 16. In dicta the Court rejected the centrality-indispensability standard as unworkable on the basis that it would require:

> . . . this Court holding that some sincerely held religious beliefs and practices are not "central" to certain religions despite protestations to the contrary from the religious objectors who brought the lawsuit. [This would have the effect] . . .

> of [requiring] us to rule that some religious adherents misunderstood their own religious beliefs. [This] . . . would cast the judiciary in a role that we were never intended to play. Slip. Op. at 17.

The dissenting opinion by Justice Brennan also rejected the judicially crafted centrality-indispensability standard:

> I believe it appropriate, therefore, to require some showing of centrality before the Government can be required either to come forward with a compelling justification for its proposed use of federal land or to forego that use altogether. "Centrality", however, should not be equated with the survival or extinction of the religion itself. Slip. Op. at 17 (Dissent) (emphasis added).

Recognizing that at their "most absolute" competing Indian and government claims are "fundamentally incompatible," Brennan argued for a legal standard which falls between absolute protection of all sacred geography and absolute destruction; one which tempers the disparate world views with compromise and mutual accommodation.

> Rather, adherents challenging a proposed use of federal land should be required to show that the decision poses a substantial and realistic threat of frustrating their religious practices. Once such a showing is made, the burden should shift to the Government to come forward with a compelling state interest sufficient to justify the infringement of those practices . Slip. Op. at 18 (Dissent).

In closing, Justice Brennan lamented the Court's "stripping" of Indians' constitutional protection against destruction of sacred lands:

> Ironically, the Court's apparent solicitude for the integrity of religious belief and its desire to forestall the possibility that courts might second guess the claims of religious adherents leads to far greater inequities than those the Court postulates: today's ruling sacrifices a religion at least

> as old as the Nation itself, . . . so that the Forest Service can build a six-mile segment of a road that two lower courts found had only the most marginal and speculative utility. . . .
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> * * *
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> Given today's ruling, [the Indians'] freedom [to maintain their religious beliefs] amounts to nothing more than the right to believe that their religion will be destroyed. Slip. Op. at 18-20 (Dissent).

5. AIRFA.

By now the Supreme Court's interpretation of AIRFA in Lyng is well known; the same or similar conclusions regarding the Act having been reached in most reported lower court decisions. First, it held that AIRFA is but a statement of policy by Congress, and in Lyng the Court was persuaded the Forest Service could not have been "more solicitous in respecting Indian religion and AIRFA policy." (Again, to reach this conclusion the Forest Service had to ignore the expert testimony of its own witnesses!)

Second, the Court concluded that "[n]owhere in the law is there so much as a hint of any intent to create a cause of action or any judicially enforceable individual rights." Slip. Op. at 15.

Finally, the Court referred to remarks by Congressman Udall that AIRFA was but a "sense of Congress' joint resolution," that it confers on Indians no "special religious rights," and that in fact "has no teeth in it." Slip. Op. at 15.

Not to worry about special religious rights: the effect of the Lyng decision is to strip Indians of all constitutional religious rights for the protection of sacred sites!

Concerning AIRFA, Justice Brennan made two points in dissent. First, as mentioned earlier, Congress expressly found by virtue of AIRFA and its legislative history that the Federal government has left a legacy of persecution of Indian religion under the guise of "incidental effects." If the "incidental effects" of government actions are above constitutional scrutiny, that persecution will continue. Second, he described the Court's decision as making a "mockery" of AIRFA's policy to "protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the[ir] traditional religions." Slip. Op. at 20 (Dissent).

6. Establishment Clause.

The majority reasons that to accept the Indians' free exercise claims would amount to establishing a "religious servitude" on public lands, thereby divesting the government of its "right to use what is, after all, its land." Slip. Op. at 13. Perhaps such a servitude -- albeit equitable and moral -- does exist! As D'Arcy MacNickle noted, They Were Here First. Moreover, the Indian Claims Commission never established a monetary value for the religious and spiritual uses of Indian aboriginal territory, nor were Indians ever so compensated.

In dissent, Justice Brennan recognized that the Indians did not seek to exclude all human activity. Indeed, a number of environmental groups were co-parties to the litigation, an implicit recognition that certain non-religions of the high country are in fact harmonious with religious uses. Though such a case was clearly not before the Court; the specter of one certainly was. But only under those circumstances might legitimate establishment clause concerns be raised. See Slip. Op. at 18-19 (Dissent).

C. NEED FOR AIRFA AMENDMENTS

1. Background

It has been a decade since AIRFA's enactment. With the passage of time, Indians and Indian advocates have become experienced in terms of AIRFA's strengths and weaknesses. Even before the Supreme Court's decision in Lyng, the results of various administrative and court battles have demonstrated the need to amend AIRFA in several ways. Now, because of the Lyng decision, Indians must look to and rely exclusively on Congress to strengthen AIRFA to re-establish an equitable balance between Indians and the Federal government concerning land management matters. Congress, with power under the Indian Commerce Clause, Article I, §8 of the Constitution, and with virtual "plenary" authority over Indian affairs, can statutorily reinvest Indians with religious and cultural rights under AIRFA that heretofore were taken for granted as constitutional rights. 3/ Religious diversity and free

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3/ The Court implicitly recognized such a principle in the context of AIRFA in Roy, when it noted that AIRFA -- "with its emphasis on freedom to believe, express and exercise a religion -- accurately identifies the mission of the Free Exercise Clause itself." Roy, supra, 90 L.Ed.2d at 745.

exercise are valid secular purposes of a constitutional democracy; thus an amendment to AIRFA which fairly accommodates and insulates Indian religious free exercise from persecution by the Executive Branch of the Federal government does not run afoul of the establishment clause.

Justice Brennan hit on the essence of the dilemma created by the majority's decision in Lyng when he noted that Federal bureaucrats have now been blessed with "unilateral authority to resolve all future disputes in [their] favor, subject only to the Court's toothless exhortation to be 'sensitive' to [Indian] religions." Slip. Op. at 16 (Dissent). Prior to the Lyng decision, Indians had the first amendment as a means of ensuring some measure of protection for their religions. After Lyng, Congress must now shoulder the responsibility the Court shirked, that of allowing a fair measure of "mutual accommodation . . . tempered by compromise." Id. at 17.

2. Comments Relative to the Cranston Bill, S. 2250

On March 31, 1988, Senator Alan Cranston, joined by Senators Inouye and DeConcini, introduced S.2250, a bill to amend AIRFA by adding a new Section Three, which accomplishes two basic purposes. First, §3(a) would establish as Federal statutory law the free exercise standard developed by lower courts in Indian sacred-site cases. See, e.g., discussion of Wilson v. Block, supra; Sequoyah v. TVA, supra. Section 3(b) in turn would give Federal district courts authority to issue orders to enforce the provisions of Section Three. I commend these three respected members of the Senate for their courage and determination, recognizing that S. 2250 as presently drafted is but a first step in what should be a deliberate and thoughtful process. However, there are several textual problems and shortcomings which I believe can be easily corrected. I address those below.

a. "Historically Indispensable".

S.2250 begins with the language: "Except in cases involving compelling governmental interests at the highest order, Federal lands that have been historically indispensable to a traditional American Indian religion . . . ." What is intended by the use of the phrase "historically indispensable"? In my experience, several serious problems emanate from the use of such a phrase.

First, indispensability has been used for some time as part of the "centrality-indispensability" standard courts created as a legal threshold for Indians establishing a "burden" or infringement on religious free exercise rights. This standard is ethnocentric, unworkable, and essentially shields Federal agency decisions from first amendment free exercise scrutiny, a result which cannot be tolerated either pre- or post-Lyng.

Second, the term "historically" connotes, in anthropological terms, the dividing line between prehistory and history in the context of first European contact with Native people in various parts of the Americas. This dividing line itself is ethnocentric, because it ignores the rich oral traditions and history of Indians, as well as denying the dynamic, evolving nature of Native spirituality. Under such a standard most Indians in northern California, for instance, would have to establish factually that a site has been "indispensable" to their religious practice since the time of or before first contact with Spanish conquistadors as a prerequisite to meeting their legal burden. That would be the result under the present language of S.2250. Moreover, any arbitrary definition of historical (e.g., at least 100 years) presents the same problems.

Non-Indian religious practitioners can change their religious beliefs in the course of an employment contract and still receive first amendment protection, as the Supreme Court's Hobbie decision illustrates. Why impose a higher standard statutorily which discriminates against Indian religion?

Terms such as "historical" and "indispensable," if carefully defined, could conceivably be used as criteria in an AIRFA amendment to assist Federal agencies and reviewing Federal courts to assess the importance of a particular sacred area in functional and relative terms. They are, however, only two of numerous criteria. Under no circumstances should they be put together to form the sole basis for a legal threshold over which all Indian claims would have to pass. As Justice Brennan noted, such a standard would push an Indian religion to extinction or the verge thereof before any free exercise rights were accorded it. Under those circumstances, if they were ever reached, one would believe protection should be absolute.

b. "Incidental Effects".

The Supreme Court in Lyng rejected the "effects" test as the correct test of religious infringement in suits by religious adherents attempting to block government action, in favor of what has been termed as the "affirmative coercion" test. As discussed above, I believe this change is unsupportable as a matter of constitutional doctrine, and discriminatory in its result. Any amendment to AIRFA must, therefore, necessarily make clear that not only the affirmative actions of government infringing on Indian religion but the incidental effects which produce the same result violate Federal law. What is the AIRFA of 1978 and its supporting legislative history if not a comprehensive and exhaustive study and exposure of the effects of both the intentional and incidental byproducts of Federal law and policy on Indian religion? Little substantive change has occurred since AIRFA's enactment in 1978 in terms of incidental effect, despite oversight hearings in 1983. With the Supreme Court eliminating constitutional redress for religious free exercise infringement, Congress must shoulder this responsibility in express statutory terms.

C. "Integrity" - "Substantial Infringement".

Dr. Deward Walker, in a paper authored last year on Indian sacred geography, believes the concept of protection of the integrity of sacred physical space is a more functionally appropriate and useful standard by which to gauge proposed disturbances to sacred sites. Dr. Walker's paper was attached to an amici curiae brief which I authored in the Lyng case, and he is attaching a copy of it to his testimony today. Under an "integrity" concept, a number of criteria could be devised to assess the role and importance of a particular site and the effect of proposed government action on that site. I will leave to Dr. Walker the responsibility of flushing out that concept in greater detail. Suffice it to say, however, that I strongly believe that such a standard more fairly measures the religious interests of Indians without opening up the AIRFA process to scores of spurious legal claims.

I also believe Dr. Walker's "integrity" standard captures the spirit and intent of Justice Brennan's "substantial infringement" standard discussed earlier, and results in the "mutual accommodation . . . tempered by compromise" balance sought by the dissent in Lyng.

d. Lack of "Unanimity of Belief"; Proof of "Certainty of Doom".

As I discussed earlier, Justice O'Connor essentially discredited the Indians' religious claims in Lyng because there was not a unanimity of belief among northern California Indians concerning the impact of the G-O Road's construction on their religion, and because there was not certain proof of their religion's "doom". These factual proof standards have never been required in other religion cases by other religious adherents, and any AIRFA amendment -- preferably by express language but at a minimum in legislative history -- must make it clear that such standards will not be tolerated here.

e. Cause of Action; Private Right of Action to Enforce AIRFA.

Section 3(b) of S.2250 should be amended to include statements providing for a private individual (and/or tribal) right of action to sue to enforce AIRFA, and standing on the part of individual Indians and tribes aggrieved by agency actions to sue to enforce AIRFA. Furthermore, 3(b) should not only give Federal courts the authority to issue orders to enforce the provisions of Section Three, but all of AIRFA.

f. De Novo Review by Federal Courts; Stringent Consultation Requirements.

To avoid *Lyng* and *Means* type problems, where Federal bureaucrats simply ignore the factual record made by Indians in an administrative proceeding and are subsequently shielded from careful Federal court review of fact findings by the Administrative Procedures Act review standards, Federal district courts must be given authority to review the factual findings at agencies *de novo*.

Moreover, the concept of early, rigorous, continuous and meaningful consultation must be expressly incorporated into AIRFA, to ensure the creation of a full, complete record of impacts and effects on Indian religion. A record from which agency decision-makers hopefully will understand those impacts and effects on the real lives of Indian people. Dr. Walker and Patrick Lefthand will elaborate further on the need for express language imposing meaningful consultation between Indian people and Federal bureaucrats.

D. CONCLUSION

The Supreme Court in *Lyng* produced what Justice Brennan described to be a "cruelly surreal result . . . [where] governmental action that will virtually destroy a religion is nevertheless deemed not to 'burden' that religion." Slip. Op. at 14 (Dissent). S.2250 represents a critical first step to raise Indian religion "like the Phoenix from the ashes" of the *Lyng* decision. Thank you for this opportunity to share my views on *Lyng* and S.2250 with the Committee.

TESTIMONY OF DR. DEWARD E. WALKER, JR.
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UNIVERSITY OF COLORADO, BOULDER COLORADO
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON
S. 2250
A BILL TO AMEND THE AMERICAN INDIAN
RELIGIOUS FREEDOM ACT OF 1978.

MAY 18, 1988

I. INTRODUCTION

My purpose here today is to discuss the impact S. 2250 would have on AIRFA, and more broadly, the impact it would have on the efforts of American Indians to gain free exercise of their religious life on federal land. Over the past 30 years, I have examined the impacts of federal policy and programs on various American Indian Tribes of the Northwest. As an ethnographer and ethnohistorian, my research has focused especially on the nature of traditional religious beliefs and practices, and changes brought in them by federal policies and programs. As part of my testimony today I am submitting two supporting documents. They are: (1) "Protection of American Indian Sacred Geography: Toward a Functional Understanding of Indian Religion Focusing on a Protective Standard of Integrity," and (2) "Chief Tendoy Cemetery Memorandum of Agreement Between the Idaho State Historic Preservation Officer and the United States Department of the Interior, Bureau of Land Management, Idaho."

Senator Cranston's purposes in S. 2250 are to strengthen AIRFA by requiring federal agencies to manage federal lands so as not to impair or interfere with the exercise or practice of traditional American Indian religions, except under the most extreme conditions. It would also provide United States district courts with the authority to issue orders to enforce AIRFA requirements. I support these objectives and applaud the efforts of Senator Cranston and others responsible for S. 2250. Nevertheless, I wish to raise certain questions concerning the "historical indispensability" language included in the proposed bill and to highlight certain other serious problems I have detected in the implementation of AIRFA that are not addressed in S. 2250 as currently proposed by Senator Cranston.

II. HISTORICAL INDISPENSABILITY

Since the passage of AIRFA in 1978, most efforts by American Indians to gain first amendment protection for their religions have been frustrated by the judiciary's use of what has come to be called the "centrality standard." As I have demonstrated in the first paper I have submitted to you today, the "centrality standard" is unrealistically demanding in that it requires that an American Indian religion be brought to the edge of extinction before first amendment guarantees against infringement are activated. In addition, I have argued in this same paper that judicial determinations of "centrality" have rarely been fact-driven; instead, they have tended to be primarily interpretive and to rest on very weak or non-existent factual foundations.

I propose that the "historically indispensable" language be replaced by language that would emphasize the integrity (i.e., wholeness or completeness) of American Indian religious practice. I have argued in the first paper I have submitted to you that if first amendment protection against infringement of the free exercise of religion is to be meaningful for American Indians, it must protect not merely the "central" features of religious practice, it must protect customary religious practice in its completeness. In judicial practice the "centrality standard" can protect only a small fraction of the customary practice of American Indian religions. I believe a standard of "historical indispensability" would introduce yet another limiting criterion. It would enable federal land managers and the judiciary to exclude even more aspects of customary religious practice from first amendment protections of free exercise. "Historical indispensability" would provide an increased discretionary latitude to federal land managers and the judiciary. This I oppose. The "centrality standard" already gives them too much discretionary authority.

III. CONSULTATION

Before AIRFA, and especially before the Indian Reorganization Act of 1934, the official federal policy toward American Indian religions may be described as negligent or openly hostile. A brief history of the official federal policy of persecution of practitioners of American Indian religions appears in the "American Indian Religious Freedom Act Report -- P.L. 95-341 --Federal Agencies Task Force" published by the United States Department of the Interior in 1979. For many of us, the promise of AIRFA in 1978 was that negligent and hostile federal policies would change through the mechanism of consultation, in which federal agencies would consult with American Indians on the religious impact of their decisions and they would then find ways to avoid or mitigate undesirable impacts. The absence of enforcement mechanisms in AIRFA was seen by many of us as a weakness, but not a fatal one. Few believed in 1978-79 that the promise of AIRFA would not be realized more because of ambiguities in the law as to what constitutes appropriate consultation. I strongly recommend that this aspect of AIRFA be addressed in the amendments your committee is now considering. Since 1978-79, I have observed and analyzed some 25 separate examples of AIRFA consultation, between 15 Tribes and six major federal agencies in the greater Northwest. Several conclusions may be drawn from this exercise which I wish to share with you as proof of the need to amend this aspect of AIRFA.

A. There is a pronounced tendency in the federal agencies to assign AIRFA consultation exercises to archaeologists. These agency professionals are thought to be capable of dealing with American Indian religious concerns; in reality they generally have little, if any, familiarity with either living Indian people or their religions. Perhaps this common practice is due to the fact that a high percentage of the disputes between Tribes and the federal agencies have involved cemeteries. Apparently because they have an interest in burials, the agency heads have come to think of archaeologists as competent in matters of American Indian religious belief and practice. They are generally unqualified in these matters. In fact, it may be that other agency personnel, such as range management specialists, would be less biased against reburial than are many of the archaeologists now in the agencies. Certainly there is widespread confusion among agency directors as to the differences between AIRFA and ARPA. This confusion also stems from agency adoptions of the phrase "cultural resource management." Clearly, federal agencies must hire other, better qualified specialists than archaeologists for such consultation on religious topics with American Indians. Present practice is unfair to both archaeologists and American Indians.

B. There is a widespread tendency in the federal agencies to involve Indian people in the planning for projects too late for them to have meaningful input and influence. It is only after the planning for hydroelectric projects, transmission lines, mines, pipelines, highways, timber harvesting, ski runs, etc., has reached advanced stages that Tribes are notified, if at all, of such activities. By this time, enough planning resources and political pressure have been brought to bear to make most Indian objections or requests for project modifications unacceptable to planners in the agencies. I have also seen many notices customarily sent to Tribes with only the vaguest details about project plans. Such cryptic notices generally betray either considerable negligence or frankly, cynical approaches to AIRFA consultation with the Tribes.

C. When shortcomings in the consultation process are brought to the attention of federal land managers, they seem generally unwilling to admit the existence of problems or to take the Tribes' objections seriously. This is especially evident in their failure to commit the funds, personnel, and time necessary for meaningful consultation to occur. Tribes are not often able to fund the research necessary for informed reactions to hydroelectric, pipeline, mining and similar complex ventures undertaken on federal lands, on their reservations, or in their treaty-reserved areas on federally-held lands. In the West, and especially the Northwest, many millions of acres are open to Tribes through reserved treaty rights. The agencies must commit more funds, personnel, and time if consultation is to be effective. The Tribes have great difficulty in responding to such complex ventures.

D. Some federal agencies have failed to fully develop and implement uniform consultation procedures as called for under AIRFA. For example, during the recent Basalt Waste Isolation Project planning by the Department of Energy at Hanford, it became and remains painfully evident, that this agency has not implemented procedures for Native American AIRFA consultation. Only now, a decade after AIRFA, are weak attempts being made to implement such procedures. Indians have been consulted only after they have legislatively forced themselves on this federal agency, and then only after agency projects had been planned and project implementation begun. This habit may be seen in the purely perfunctory consultation now taking place between the Tribes and the Department of Energy concerning reclamation activity on Gable Mountain at the Hanford Near Surface Test Facility. This sacred mountain and the damage done to it by this federal agency stand as permanent reminders of how Tribes have been called in only after projects have been planned and partly implemented.

E. Another serious obstacle to effective, meaningful consultation is the present latitude permitted the federal agencies in selecting tribal consultants. Quite simply, there are no guarantees that the consultants employed by the federal agencies are representative of the Tribal communities from which they may (or may not) be drawn. Under present federal agency interpretations of AIRFA, it is possible for the agencies to select consultants at their convenience and to determine the conditions under which they serve as consultants. The Tribes must have more control over the selection of consultants (spiritual leaders and others) if AIRFA is to work effectively.

F. I have recently observed a strikingly successful AIRFA consultation in the current, joint nomination of the Tendoy Cemetery in Idaho to the National Register of Historic Places. The Shoshone-Bannock Tribes of Idaho and the Salmon District Office of the Idaho Bureau of Land Management have established a model of what meaningful consultation should entail . In my view, their joint efforts to rescue this famous but neglected cemetery from the obscurity of a cattle pasture and to elevate it to the status of a National Historic Place should be studied carefully by all federal agencies who consult with Tribes under the provisions of AIRFA. I have submitted to you a handout which describes this joint nomination by the Shoshone-Bannock Tribes, the Idaho State Historic Preservation Officer, and the Idaho Bureau of Land Management under a Memorandum of Agreement. These materials permit several important conclusions concerning meaningful consultation between American Indians and federal agencies.

1. This consultation required patience and a commitment of substantial time, funds, and personnel from both the Tribes and from the Salmon District of the Bureau of Land Management.

2. This consultation required resolution of numerous differences of perspective concerning treatment of the dead by the consulting parties.

3. This consultation required agreements on numerous issues that were not directly related to the cemetery.

4. This consultation has produced a growing trust and confidence on both sides which is translating into mutually beneficial consultation on various other projects not involving religious beliefs or practice. There has been a pronounced improvement in relations between the Tribe and the Agency. I wish to commend Daniel Hutchison, Bureau of Land Management Archaeologist for the State of Idaho, and Nancy V. Anderson, Archaeologist for the Salmon District of the Idaho Bureau of Land Management. They have show unusual sensitivity and patience in dealing with the dedicated Tribal members of the Shoshone-Bannock Land Use Policy Commission.

IV. CONCLUSION

In conclusion, I wish to express my appreciation to you for permitting me this opportunity to assist your committee in a matter of great importance in the history of the United States. Historically, American Indians have faced intolerance and hostility toward their religious beliefs and practice from the federal government. AIRFA is only a beginning what must be a long-term struggle to recover fundamental religious freedom for American Indians. Much remains to be done in redressing several centuries of systematic religious persecution. Senator Cranston and others responsible for S. 2250 are to be commended. Thank you.

0012T

August 1985

CURRICULUM VITAE

Deward E. Walker, Jr.

Department of Anthropology
University of Colorado
Boulder, Colorado 80309

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DEWARD E. WALKER, JR.
Curriculum Vitae

I. Biographical Information

Date of Birth:	August 3, 1935
Military Service:	Active Duty, 1954-56, U.S. Army, Honorable Discharge, 1962
Married:	Five children

II. Education

1953	Fork Union Military Academy, Fork Union, Virginia
1953-54	Eastern Oregon College, LaGrande, Oregon
1956-58	Eastern Oregon College, LaGrande, Oregon
1958	Mexico City College, Summer, Mexico, D.F.
1960-61	B.A., Anthropology, University of Oregon, Eugene, Oregon
1961	University of Oregon, School in Archaeology, Summer
1962	Washington State University, Summer, School in Ethnology and Linguistics.
1964	Ph.D., Anthropology, University of Oregon Dissertation, "Schismatic Factionalism and Development of Nez Perces Pentecostalism"

III. Areas of Concentration

Acculturation and Culture Change
Applied Anthropology (Education, Medical, Expert Witness)
Demography
Ethnographic Reconstruction
Ethnology of Northwestern North America (Plateau, Northwestern Plains, and Northern Basin)
Ethnological Theory and Method
Kinship
Political Organization
Religion
Technology and Subsistence
Subsaharan Africa

IV. Academic Appointments

1961-62	Research Assistant (Archaeology), University of Oregon, Eugene.
1964-65	Assistant Professor of Anthropology, the George Washington University, Washington, D.C.
1965-67	Assistant Professor of Anthropology, Washington State University, Pullman, Washington.

IV. Academic Appointments (continued):

1967-69	Chairman and Associate Professor, Sociology/Anthropology, University of Idaho, Moscow. (Director, Laboratory of Anthropology).
1967-69	Research Collaborator, Washington State University, Pullman, and Idaho State University, Pocatello.
1969-	Professor of Anthropology, University of Colorado, Boulder.
1969-73	Research Associate in the Population Processes Program of the Institute of Behavioral Science, University of Colorado, Boulder.
1971-	Affiliate Faculty, Department of Sociology/Anthropology, University of Idaho (Laboratory of Anthropology) Moscow.
1973-76	Associate Dean of the Graduate School, University of Colorado, Boulder.

V. Memberships in Professional Societies

1965-	Sigma Xi
1966-	American Association for the Advancement of Science
1966-	American Anthropological Association
1967-	American Academy of Political and Social Sciences
1970-	Northwest Anthropological Conference
1973-	Society for Applied Anthropology
1980-	High Plains Regional Section, SfAA

VI. Offices in Professional Societies

1969-	American Indian Development, Academic Advisor
1970-79	Executive Committee, Society for Applied Anthropology
1976-79	Treasurer, Society for Applied Anthropology
1980-82	Chairman, High Plains Regional Section of the Society for Applied Anthropology

VII. Editorial Appointments

1966-	Co-Editor, *Northwest Anthropological Research Notes*, with Roderick Sprague, University of Idaho, Moscow.
1970-76	Editor, *Human Organization*, Society for Applied Anthropology.
1971-	Editor, Plateau Volume: *Handbook of North American Indians*, Smithsonian Institution.

VII. Editorial Appointments (continued):

1973-74	Associate Editor, American Anthropologist, American Anthropological Association.

VIII. Honors and Awards

1961	NSF Research Fellow (Archaeology), University of Oregon, Eugene, Summer.
1961	B.A. with Honors, University of Oregon, Eugene.
1961-64	NDEA Fellow, University of Oregon, Eugene.
1962	Cressman Prize for Best Essay in Anthropology, University of Oregon, Eugene.
1964-	Fellow, American Anthropological Association.
1967	Sigma Xi Prize for Best Research Contribution at the University of Idaho, Moscow.
1968	Sigma Xi Prize for Best Research Contribution at the University of Idaho, Moscow.
1970	Invited Keynote Address, "The Ethics Controversy in Anthropology," Annual Meeting, Northwest Anthropological Conference, Corvallis.
1970-	Fellow, Society for Applied Anthropology.
1972	Invited Keynote Address, "The Native American in Transition: Past as Prologue," Idaho State University, Pocatello.
1982-	Life membership in the Society for Applied Anthropology. Awarded in 1982 for contributions to the Society and to the field of Applied Anthropology.
1982	Invited Keynote Address, "Legal and Political History of the Indians of Idaho," Idaho State Legislature, June, Boise, Idaho.
1982	Invited Keynote Address, "Dialectical Contradictions in HPRS," Annual Meeting, Boulder.

IX. Basic Research Projects

1961	Archaeological Excavation on the John Day River, Central Oregon. A study of a late period house pit site. Financial support came from the National Science Foundation, Washington, D.C.

IX. Basic Research Projects (continued):

1962 Nez Perces. Summer: A study of Nez Perces acculturation as seen in the sweat bath complex. Financial support came from the National Science Foundation, Washington, D.C.

1963-64 Nez Perces. A study of Nez Perces religious acculturation (see publications and dissertation). Financial support came from the National Science Foundation, Washington, D.C.

1965-66 Nez Perces, Kutenai, and other Plateau Salishan and Sahaptian Groups. A comparative study of mutual cross-exploitation of resources in the aboriginal Plateau, focusing on the Nez Perces. Financial support came from the National Science Foundation, Washington, D.C. and the Nez Perces Tribe.

1965- Colville. A study of Colville acculturation. The field work has been completed, and a monograph and several articles are planned (see publications). Financial support came from Washington State University, Pullman, the University of Idaho, Moscow, and the University of Colorado, Boulder.

1966- A study of Nez Perces mythology in conjunction with Haruo Aoki of the University of California at Berkeley. Financial support came from the National Science Foundation, Washington, D.C. and the University of Idaho, Moscow (see publications).

1966-83 Kutenai, Kalispel, Coeur d'Alene, Nez Perces, Shoshone-Bannock, Shoshone-Paiute. A continuing comprehensive ethnographic survey of the American Indian cultures of Idaho which has resulted in several monographs (1973, 1980, 1982). Others are forthcoming from the University of Idaho Press. Financial support has come from diverse sources; Foundations (N.S.F. and N.E.H.), Universities (W.S.U., Idaho, C.U.), Bureau of Indian Affairs, Portland, Tribes of Idaho, and the Idaho State Department of Education, Boise.

1969-72 Yakima and Colville. A comparative study of aboriginal Yakima and Colville subsistence, land tenure, social organization and demography. Financial support came from the Bureau of Indian Affairs, Portland.

1971- Blackfeet. A comparative study of culture, and demography on the Blackfeet Reservation. Financial support came from the Indian Health Service and the Council on Research and Creative Work, University of Colorado, Boulder.

IX. Basic Research Projects (continued):

1971-73	Nez Perces. Preparation of texts on Nez Perces oral literature and history. Financial support came from the Bureau of Indian Affairs, the National Endowment for the Humanities, and the Tribe.
1972-73	Wind River Shoshone and Arapahoe. A comparative study of demography on the Wind River Reservation. Financial support came from the Indian Health Service, U.S.P.H.S. and the Council on Research and Creative Work, University of Colorado, Boulder.
1972-73	Kutenai. A study of Kutenai hunting and fishing. Financial support came from the Tribe and the Native American Rights Fund, Boulder.
1972-	Sioux. A continuing, long-term study of Sioux religion centering on Rosebud and Pine Ridge through such informants as Dawson No Horse, Wallace Black Elk and Charlie Kills Enemy. Financial support is coming from the University of Colorado, Colorado Humanities Program, Denver.
1973-74	Yakima. Preparation of texts on Yakima oral literature and history. Financial support came from the Bureau of Indian Affairs and the Yakima Tribe.
1980-83	Kutenai. A study of Kutenai fishing, culture, and religion. Financial support came from the Tribe and the Native American Rights Fund.
1980-	A survey, description and analysis of the sacred geography of Native Americans in the State of Idaho and Colorado. Financial support is coming from Tribal and State agencies.
1981-	Ft. Peck Assiniboine-Sioux. A study of the functions of riverine resources in the traditional and modern subsistence practices of the Assiniboine and Sioux of Northern Montana. Funding is coming from the Tribe.
1982-	Shoshone-Bannock. A study of Shoshone-Bannock subsistence and territoriality in the Northern Great Basin, Western Plains, and Southern Plateau. Financial support is coming from the Bureau of Indian Affairs, and the University of Colorado, Boulder.
1984-	Spokane. A study of Spokane ethnography and acculturation focusing on subsistence economics and the functions of riverine resources. Funding is coming from the Tribe.

X. Applied Research Projects: Anthropological Expert Witness

1967	The State of Oregon v. Jess[illegible]e. In the Circuit Court of the State of Oregon [illegible]d for the County of Sherman, Case No. 3350. I conducted research and offered testimony on behalf of Greene and the Nez Perces Tribe concerning Nez Perces traditional fishing, acculturation, and contemporary fishing on the mid-Columbia River (Preachers Eddy).
1969	The State of Oregon v. Jesse Greene. In the Circuit Court of the State of Oregon in and for the County of Sherman. I conducted research and offered testimony on behalf of Greene and the Nez Perces Tribes concerning Nez Perces traditional fishing, acculturation, and contemporary fishing on the mid-Columbia River.
1971	The United States v. Marcus Arthur. In the U.S. District Court of Idaho, Boise, Idaho (1971). I conducted research and offered testimony on behalf of Arthur concerning traditional Nez Perces law governing homicide.
1971-72	The Yakima Tribe v. Colville Tribe. In re the division of a claims award for ceded territory, before the Court of Claims, Washington, D.C. (1971-72). I conducted research and offered testimony on behalf of the Yakima Tribe concerning ceded land areas and subsequent settlement of various groups on the Yakima and Colville reservations.
1973	The State of Idaho v. Dianne C. (David) Coffee. In the District Court of the First Judicial District of the State of Idaho in and for the County of Boundary, Magistrate Division, Case No. M-2041 (1973). I conducted research and offered testimony on behalf of Coffee concerning Kutenai traditional and contemporary hunting, fishing, and gathering practices in Northern Idaho and adjacent areas.
1975	Crowe v. Erickson, CV 72-401 (1975). I conducted research and offered testimony on behalf of Crowe on Sioux and other Native American religious beliefs and practices concerning hair style and other personal adornment.
1978	Little Raven v. Norman Hess, CV No. 77-165-C (1978). I conducted research and offered testimony on behalf of Little Raven concerning the significance of various ritual objects in Arapahoe and other Native American religions.

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X. Applied Research Project: Anthropological Expert Witness (continued):

1979 Bear Ribs v. Taylor, CV No. 77-3989-RJK[G] (1979). I conducted research and offered testimony on behalf of Bear Ribs concerning Sioux and other Native American religious belief and practices.

1979 The State of Nebraska v. Leon P. Janis, also known as Chuck. District Court of Sheridan County, Nebraska, Case No. C 1606 (1979). I conducted research and offered testimony on behalf of Janis concerning Sioux treaties, establishment of the Pine Ridge Reservation, reservation border towns, tribal political organization, and interracial discrimination.

1980-83 In re the Application of Northern Lights, Inc. Project No. 2752-000 Federal Energy Regulations Commission, Dept. of Energy (1980-83). I conducted research and offered testimony on behalf of the Kutenai tribes of Montana, Idaho, and British Columbia, relating to the cultural and religious values they attribute to the Kutenai Falls Area.

1983 People of the State of Coloardo v. Merle Locke, Criminal Action No. 82 CR 537-6 (1983). I conducted research and offered testimony on behalf of Locke concerning Sioux and other Plains tribal customs concerning theft, religion, warfare, and intertribal relations.

1984- I submitted affidavits to the court concerning the possession and religious significance of eagle feathers used in the Native American Church on the Fort Hall Reservation on behalf of Yazzie.

1985- Herbert N. Sample v. Joseph Campoy, Civ. No. R-85-0208-LKK. In the United States District Court for the Eastern District of California. I submitted a declaration to the court concerning the use and meaning of the sweat bath as part of an effort by California Indian Legal Services to introduce the sweat bath into Folsom Prison for Native American inmates, on behalf of Sample.

XI. Applied Research Projects: Educational and Medical Anthropology

1963-64 Board of National Missions of the United Presbyterian Church and Joint Session of the Nez Perces Presbyterian Churches. Evaluation of missionary impact, intermittent participation in workshops, and submission of recommendations for change in missionary policies.

XI. Applied Research Projects: Educational and Medical Anthropology (continued):

1965-83 Participant in workshops for training teachers and administrators of Native American students and school systems, writer and editor of special curriculum materials for Native American students, and evaluator of various schools, educational laboratory programs, and curriculum innovations concerning problems of Native American education for the following six agencies:

1. Northwest Regional Educational Laboratory, Portland.
2. Southwest Regional Educational Laboratory, Albuquerque.
3. Kennedy Congressional Subcommittee on Indian Education, Portland and Washington, D.C.
4. Idaho State Department of Education, Boise.
5. Institute of American Indian Arts, Santa Fe.
6. American Indian Higher Education Consortium, Denver.

1969 Summer Institute for Secondary School Teachers in the Social Sciences: Anthropology. Eastern Oregon College, LaGrande, Oregon. Lecturer.

1969-70 American Indian Development, Inc. Director, Summer Institute for Native American college students, Denver and Spokane, continuing as Academic Advisor.

1969-75 Center for the Study of Migrant and Indian Education. Lectures given for teachers of Native American students and assistance given in planning and development of curriculum materials for Native American students. Toppenish, Washington.

1970 Summer Institute on Teaching of Anthropology for College Teachers. Department of Anthropology, University of Colorado, Boulder. Lecturer.

1970-73 Consultant to UPSTEP Program, Social Science Education Consortium, University of Colordo. Lecturer and writer.

1971 Native American Educational Opportunities Program. University of Colorado, Boulder. Advisor to directors and students.

1971-73 "Organization of Mental Health Services on the Rural Campus." Task Force of the WICHE Program, "Improving Mental Health Services on Western Campuses," Boulder. Lecturer and consultant on research design, with John L. Schultz.

XI. Applied Research Projects Educational and Medical Anthropology (continued):

1971-73	American Medical Cancer Research Center and Hospital, Denver. Lectures concerning death and bereavement to nurses caring for cancer patients.
1971-73	Indian Health Service, U.S.P.H.S., Billings, Montana. Research findings and recommendations presented concerning the impact of planned parenthood programs among Native Americans on reservations in the Northern Plains.
1978-79	American Indian Religious Freedom Project. Native American Rights Fund, Boulder, Kurt Blue Dog, Director. Consultant, researcher, and writer.
1980	Readers Digest. Editorial consultant to Readers Digest in developing and producing books dealing with Native American topics, e.g., America's Fascinating Indian Heritage.
1982	Summer Institute on Native American Religion, Department of Religious Studies, University of Colorado, Boulder. Lecturer.

XII. Monographs and Articles (* - Publications Evaluated by Anonymous Referees)

1964	A Survey of Nez Perces Religion. New York, Board of National Missions, United Presbyterian Church in the U.S.A. 99 pp.
1964-65	From Sorcery to Science: An Investigation by Dr. Brian Rose into the Social Implications of Sorcery and Witchcraft. Recorded and produced by the South African Broadcasting Corporation Overseas Transcription Service with other contributions by Aquina, Baragwanath, Gelfand, Hahlo, Jeffreys, Levinson, Madsen, Margetts, Marwick, Masinga, Mayer, Mbata, McLean, Mqotsi, Mutwa, Ntsekhe, Parrinder, Perk, Shanin, and Walker. Contributor and lecturer.
*1966	"A Nez Perces Ethnographic Observation of Archaeological Significance." American Antiquity, 31, 3:436-437. Brief communication.
*1966	"Some Limitations of the Renascence Concept in Acculturation: The Nez Perces Case." In The American Indian Today. Stuart Levine and Nancy Lurie, eds. Deland Florida, Everett/Edwards, Inc.

XII. Monographs and Articles (* - Publications Evaluated by Anonymous Referees; continued):

*1966 "The Nez Perces Sweat Bath Complex: An Acculturational Analysis." Southwestern Journal of Anthropology, 22, 2:133-171.

*1967 "Problems of American Indian Education." Research Studies of Washington State University, 34, 4:247-252.

*1967 "Nez Perces Sorcery." Ethnology, 6, 1:66-96.

*1967 "Measures of Nez Perces Outbreeding and the Analysis of Cultural Change." Southwestern Journal of Anthropology, 23, 2:141-58.

*1967 "Indian Shakers on the Colville Reservation." Research Studies of Washington State University, 35, 2:167-72. With John L. Schultz.

*1967 "Mutual Cross Utilization of Economic Resources in the Plateau: An Example from Aboriginal Nez Perces Fishing Practices." Washington State University, Laboratory of Anthropology, Report of Investigations, No. 41. 70 pp.

*1967 "An Examination of American Indian Reaction to Proposals of the Commissioner of Indian Affairs for General Legislation, 1967." Northwest Anthropological Research Notes, Memoir No. 1, 178 pp.

*1968 Conflict and Schism in Nez Perces Acculturation, Pullman, Washington State University Press. 171 pp.

*1969 "New Light on the Prophet Dance Controversy." Ethnohistory, 16, 3:245-55.

1969 "Prepared Statement to the Special Sub-Committee on Indian Education." See Kennedy Sub-Committee Report, Part 5, pp. 2001-2. Washington, D.C., U.S. Government Printing Office.

*1970 "Stage and Statistical Models in Plateau Acculturation." Northwest Anthropological Research Notes, Vol. 4, No. 2:153-164.

*1970 "Ethnology and History." Idaho Yesterdays, 14, 1:24-29.

*1971 "Systems of North Americcan Witchcraft and Sorcery." Anthropological Monographs of the University of Idaho, No. 1, Moscow, Univerity of Idaho. Editor and contributor. 295 pp.

XII. *Monographs and Articles (* - Publications Evaluated by Anonymous Referees; continued):*

*1971 "An Exploration of the Reservation System in North America." *Northwest Anthropological Research Notes*, Volume 5, Number 1:1-143. Editor and contributor. 143 pp.

*1972 *The Emergent Native Americans*. Boston, Little, Brown and Company (textbook). Editor and contributor. 818 pp.

*1972 *Nu-Mee-Pom Tit-Wah-Tit: Nez Perces Legends*. Lapwai, Idaho, Nez Perces Tribe. Technical advisor - collecting, translating, writing and editing legends with tribal scholars. With Allen P. Slickpoo and Leroy Seth. 214 pp.

*1973 "American Indians of Idaho." *Anthropological Monographs of the University of Idaho*, No. 2, Moscow, University of Idaho. 290 pp.

*1973 *Noon Nee Me Poo. Nez Perces Culture and History*. Lapwai, Idaho, Nez Perces Tribe. Technical advisor - collecting, translating, writing and editing oral and documentary history with tribal scholars. With Allen P. Slickpoo. 316 pp.

*1974 *The Way It Was - Anaku Iwacha: Yakima Indian Legends*. Consortium of Johnson-O'Malley Committees of Region IV, State of Washington. Yakima, Franklin Press. Technical advisor - collecting, translating, writing, editing of legends with tribal scholars. With Virginia Beavert. ca. 200 pp.

*1977 *Regions of Refuge*. Editor of a translation from the Spanish for the Society for Applied Anthropology. Monograph #12. 172 pp.

*1977 *Anthropological Guide for the Coulee Dam National Recreation Area*. Anthropological Research Manuscript Series #3. University of Idaho, Moscow. With Sylvester Lahren, Jr. 78 pp.

*1978 *Indians of Idaho*. Republished monograph in new edition. Moscow, The University Press of Idaho. 207 pp. (see "American Indians of Idaho" - 1973).

*1980 *Myths of Idaho Indians*. Moscow, The University Press of Idaho. 204 pp.

*1982 *Indians of Idaho*. Reprinting. Moscow, The University Press of Idaho. 207 pp.

XII. Monographs and Articles (* - Publications Evaluated by Anonymous Referees; continued):

1982	"Legal and Political History of the Indians of Idaho." Legislative Council Committee on Indian Affairs, Minutes of Hearings held June 18, 1982, State House, Boise, Idaho, pp. 2-9.
1983	"Dialectical Contradictions in HPRS." Published in Newsletter of the HPRS, SfAA, Publication Number 1, pp. 75-77.
1983	"A Bibliography of Ethnographic sources on the Kootenai Indians in Northwest Montana." In Final Report of Cultural Resource Investigations Along Montana Forest Highway #62. Yaak, Montana, pp. 200-211. Powers Elevation, Archaeology Division, Denver.
*n.d.	Nez Perces Oral Narratives. Accepted for publication by University of California Press, Berkeley during 1982. With Haruo Aoki. ca. 500 pp. In press.
*n.d.	Conflict and Schism in Nez Perces Acculturation. 2nd Edition with an introduction by Robert Hackenberg. Moscow, University of Idaho Press. In press.
*n.d.	"The Kutenai Fishery." Accepted for publication by Northwest Anthropological Research Notes. In press.

XIII. Other Scholary Activity

Book Reviews:

A number of published book reviews dealing generally with Native Americans, comparative religion, ethnohistory, acculturation, social organization, and applied anthropology. They have appeared in such outlets as American Anthropologist, Plains Anthropologist, Human Organization, Pacific Northwest Quarterly, American Journal of Sociology, Idaho Yesterdays, and Southwestern Lore.

Conference Papers:

A number of papers read at anthropological conferences. Examples are:

1961	"The Accelerative Nature of African Systems of Migratory Labor." 14th Annual Northwestern Anthropological Conference. Eugene.
1964	"Recommendations Concerning Problems of Nez Perces Prebyterianism." Spring Meeting of the Presbytery of Northern Idaho. Lewiston.

XIII. Other Scholarly Activity (continued):

Conference Papers (continued):

1965	"Deprivation and the Genesis of American Indian Pentecostal Sects." Conference on Sectarian Movements. Ghost Ranch, Santa Fe.
1965	"The Nez Perces Prophetic Tradition." 64th Annual Meeting of the American Anthropological Association. Denver.
1966	"Nez Perces Sorcery." 19th Annual Northwestern Anthropological Conference. Banff.
1966	"A Functional Model for the Cross-Cultural Analysis of Sorcery." 65th Annual Meeting of the American Anthropological Association. Pittsburgh. Symposium Organizer and Chair.
1967	"Acculturative Stages in the Plateau Culture Area." 66th Annual meeting of the American Anthropological Association. Washington, D.C.
1968	"History of Anthropology in American Indian Studies." 5th Annual Meeting of the Idaho Historical Society, Boise.
1968	"Theory and Method in the Study of Acculturation on American Indian Reservations." 67th Annual Meeting of the American Anthropological Association. Seattle. Symposium Organizer and Chair.
1968	"American Anthropological Association Symposium on American Indian Fishing and Hunting Rights." Seattle. November 1968. Proceedings published in Northwest Anthropological Research Notes Vol. 2, Number 2:1-43. Panel member, participant, and editor.
1969	"A State Department of Indian Affairs: A Growing Need in Idaho." Invited address presented before the Sixth Annual Idaho Indian Conference, Boise.
1970	"The Ethics of Involvement: A Commentary." Annual Meeting of the Society for Applied Anthropology, Boulder.
1970	"The Growing Ethics Controversy in Contemporary Anthropology." Invited Keynote Address at the 23rd Northwestern Anthropological Conference. Corvallis.
1970	"Politico-Economic Effects of Columbia River Dams on Indians of the Northwest." 69th Annual Meeting of the American Anthropological Association. San Diego.

XIII. Other Scholarly Activity (continued):

Conference Papers (continued):

1970	"Conflicting Reference Groups in Contemporary Anthropology." 69th Annual Meeting of the American Anthropological Association. San Diego.
1971-75	A series of papers on "Developing a Native American Program of NEH and Other Grants to Tribes for Historical and Cultural Research." Santa Fe, Lapwai, Toppenish, and Washington, D.C.
1975-80	A series of papers on "Uses of Anthropology and Anthropologists in Developing and Prosecuting Claims by Native Americans." Boulder, Denver, Albuquerque, and Washington, D.C.
1980-83	"Native American Art." Visions of the Earth Art Show. Invited address for the Native American Rights Fund, Boulder. "The Crisis in Colorado Higher Education." Commentary on a Symposium. HPRS, SfAA, Boulder. "Legal and Political History of the Nez Perces Tribe." Invited address for the Nez Perces Tribe of Idaho. Kamiah, Idaho. "The Impact of Impact Archaeology on Native Americans." HPRS, SfAA, Boulder.

XIV. Service

Examples of service to various professional societies and Native American groups is listed above under IV, V, X, XI, XII and XIV. Additional examples of service at the University of Colorado are listed below. Excluded are examples of service given during appointments at previous universities, i.e., George Washington University, Washington State University, and University of Idaho, the Public Schools of Boulder, or the Colorado Indian Commission which I now serve as a technical resource person.

Department of Anthropology:

1969-72	Space Committee.
1969-70	Curriculum Committee.
1970-72	Admissions Committee.
1969-71	Ethnic and Other Minority Affairs Committee.
1982-83	Executive Committee (elected).
1984-85	Executive Committee (elected).

XIV. Service (continued):

College of Arts and Sciences:

1970-73 Space Committee.
1977-83 Academic Planning Committee (elected).

Faculty:

1971-73 Faculty Committee on Minority Affairs, Faculty Senate.
1980-82 Program Review Committee for the Institute of Behavioral Sciences. Chair.

Graduate School:

1973-76 Executive Committee.
1973-76 Council on Research and Creative Work.
1973-76 Publications Policy Committee, Chair.
1973-76 Academic Appeals Committee, Chair.
1973-76 Various Ad Hoc Committees.

XV. Teaching

Courses Taught Regularly:

Introductory Cultural Anthropology
Ethnography of North America
American Indian Acculturation
Comparative Religion

Other Courses Taught:

Ethnography of the Northwest
Ethnography of the Plains
Ethnography of Subsaharan Africa
Social Organization
Culture Change
Applied Anthropology
Theory and Method
Introductory Anthropological Linguistics

Graduate Seminars: Selected Topics:

American Indians
Applied Anthropology
Theory and Method

Graduate Student Thesis Advising: Primary Areas:

American Indian Ethnography and Archaeology
Applied Anthropology
Culture Change/Acculturation
Comparative Religion

XV. Teaching (continued):

Graduate Student Thesis Advising: Primary Areas (continued):

Director of Dissertations - 10
Member of Theses Committees - 50

TESTIMONY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
TO THE UNITED STATES SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS ON S. 2250
THE PROPOSED AMENDMENT TO THE
"AMERICAN INDIAN RELIGIOUS FREEDOM ACT"

MEMBERS OF THE COMMITTEE

INTRODUCTION

The Confederated Salish and Kootenai Tribes of the Flathead Nation testify in support of the concept of amending the "American Indian Religious Freedom Act" (hereafter, (AIRFA). We are in support of the concept, but we feel the present language of the amendment does little to blunt the disastrous impact of the U.S. Supreme Court decision in the case of Lyng vs. Northwest Indian Cemetery Association.

We realize that the amendment was proposed prior to the case and that no one could have anticipated the devastating decision by a narrow majority of the court. Apparently, neither the First Amendment to the U.S. Constitution nor the Indian Religious Freedom Act offer American Indians any protection from federal activities which result in the prohibition of, or destruction of, Indian Religious practices. With a sweep of the pen, five Justices of the Supreme Court have rewritten one of our country's basic constitutional tenets that neither the federal government nor the states may, without compelling reason, engage in activities which prohibit the free exercise of religion.

The enactment of the American Indian Religious Freedom Act in 1978 signaled the beginning of what should have proven to be an era of religious tolerance between the United States and the original inhabitants of this continent. Little follow-up was accomplished after the 1979 Task Force Review called for in the Act. This was partially because the American Indian Tribes felt comfortable with the protections afforded to religious practices via traditional interpretations of First Amendment rights and partially because of the initial responsiveness of federal agencies to the concerns evinced in AIRFA. It is now apparent that our trust in the sanctity of the heretofore traditional First Amendment protections was ill-founded. It is for these reasons and others that we will outline in this testimony that we urge a strengthening of AIRFA in terms of preventing interferences and destruction of religious practices by governmental activities on Indian lands and in off-reservation areas of traditional use.

BACKGROUND FOR TRIBAL CONCERNS

The Salish and Kootenai Tribes of the Flathead Nation have long committed themselves to the protection and advancement of Indian Religious Freedom. Despite being among those tribes which were forced to accommodate a majority population of non-Indians on the Reservation, we have persisted in the practice of our traditional beliefs. These practices frequently require us to visit off-reservation sites located upon federally administered lands. Some of the off-reservation sites are so central to our beliefs that the lack of access to or the destruction of these sites would deal a deadly blow to the heart of our very existence. The disturbance of these sites through officially sanctioned survey and excavation is as disturbing to the sacred aura of these areas as is the illegal excavation. The Tribes of the Flathead Nation have engaged in an on-going confrontation with various federal entities over the necessity for disturbance and excavation of the antiquities left by our ancestors. To allow these sites to be excavated and destroyed on the personal whim of those federal and state employees professing to "scientific curiosity" is akin to sanctioning the mutilation of our ancestors. It facilitates the artificial wiping-out of any trace of our existence. The urge to do this seems to us, quite frankly, genocidal. It is as if the desire to have us disappear will not be complete until all traces are ripped from the ground and placed on a shelf.

In addition to the above mentioned activities with regard to sacred sites and sacred objects, the Tribes have come to the forefront of the issue of repatriation of the remains of Native

Americans which languish in public museums and in private collections throughout this country. What other racial group in this country has been forced to endure the sacrilege of watching the remains of their relatives ripped from their burial sites and displayed to satisfy a totally unfathomable and morbid sense of scientific curiosity. The continued excavation and curation of American Indian remains is as detrimental to Indian Religious Freedom as would be the spiriting away and display of the remains of the Saints of the Catholic faith. There is absolutely no difference. There is no justification either morally or scientifically for such practices to continue. Presuming such remains are properly catalogued as to location where found, the repatriation of the remains to a burial site in the area of original location is not an insurmountable task. Tribes should not have to prove the bones are those of their ancestors. Tribes occupying an area where the remains were found should be presumed to have the right to repatriate them. In the absence of tribal presence, repatriation to or near the original burial site should be done by the Federal Government at its expense.

The Salish and Kootenai tribes of the Flathead Nation have also been at the forefront of the issues of possession and use of sacred objects and plants as well and their movement across international borders. Our sacred bundles, our sacred objects, our sacred plants and traditional medicines, continue to be a source of controversy with federal agencies which control border crossings and access to the sites from where these items must be gathered. This access can be denied just as effectively by the designated federal use as it can be by outright prohibition or by federal regulation inconsistent with traditional use. The inappropriate handling and insensitive viewing of our sacred objects and medicines by federal authorities, especially Customs officials, can be very detrimental as well as totally destructive to the effectiveness of the sacred objects and medicines.

AREAS OF SPECIFIC CONCERN

The Tribes are specifically concerned that the mandates given to the various federal agencies by federal statutes, especially the National Historic Preservation Act (NHPA) and the Archaeological Resource Protection Act (ARPA), result in irreversible damage to sacred sites designated for excavation and curation. All to often the decision to excavate and curate is made in a "scientific vacuum" in which every decision is weighed on the side of allowing the activities for the sake of "scientific curiosity." "Archaeological significance," the death knell for many sacred sites, is determined without the benefit of an assessment of the impact it will have on Indian Religious practice. Initial decisions to dig and shelve are made by those predisposed to digging and shelving. The propriety of the decision, if questioned, is subjected to "peer review" by others already predisposed to digging and shelving. The effectiveness of the Native American consultation processes in NHPA and ARPA can be summed up by paraphrasing the comment of one official of the Advisory Council on Historic Preservation:

> "if you refuse to participate in the process the decision to go ahead will proceed without you"

Legislation calling for "consultation and consideration" is all to often "toothless" as was so aptly pointed out by Justice O'Connor in the Lyng decision. Federal decisionmaking which impacts Indian Religious Freedom should not relegate tribal concerns to the status of a "consideration" which can be ignored by the federal decision maker. In fact, the federal decision making process should be made, in part, by the affected tribe or tribes. In the absence of effective remedies, anything short of allowing the affected tribes to be an integral part of the process by which religious concerns are addressed and effects mitigated, insures the destruction of Indian Religious practices.

CONCERNS RELATIVE TO THE PROPOSED AMENDMENT LANGUAGE

As presently worded, the proposed amendment puts the final determinations of "compelling governmental interest", "historically indispensible", "traditional . . . religion", and "serious impairment or interference" squarely in the hands of the bureaucrats. They are the same federal decisionmakers from whom the Indian Tribes need protection. The threshold of "serious impairment and interference" will be used to the tribal detriment as will the bureaucratic determinations of "indispensability and traditionality." The restriction to federal "land activities" will hamstring the tribes in relation to those issues germane to border crossing, importation of religious objects, gathering plants and medicines, and the repatriation of Indian remains. A more meaniful reference would be to "federal activities" which detrimentally impact upon Indian Religious Freedom.

The present language seems to be narrowly drafted to mitigate the negative impact of the Lyng decision which may or may not have been the intent of the drafters. In the absence of more comprehensive legislation dealing with the other issues we have set forth in this testimony, the Confederated Salish and Kootenai Tribes recommend a strengthening of the amendment language. Such strengthening should allow for the affected Indian Tribes to become an integral part of the decisional process. The determinations of "indispensability, traditionally, impairment and interference" are best made with the presence of the Indian Tribes in the decision making body. Federal Court remedies should be made explicitly available to the Indian Tribes whose concerns are overridden by the federal decision maker.

The Tribes are also extremely concerned that the issue of guaranteeing confidentiality for Indian religious information is not addressed. Confidentiality for religious information when making the determinations of "indispensibility, traditionality, serious impairment and interfence" must be maintained if the Indian Tribes are to be able to utilize the full protections of the amendment. The disclosure of sensitive information, inadvertant or otherwise, can be as harmful to and prohibitive of Indian Religious Freedom as could be affirmative federal land activities.

The Confederated Salish and Kootenai Tribes urge the Committee to strengthen the amendment language so that Indian Tribes can truly participate in the decisional process and have effective remedies when wronged. Alternatively we would support comprehensive legislation dealing with all concerns we have heretofore addressed.

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STATEMENT OF MARILYN B. MILES BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 2250

May 18, 1988

Mr. Chairman and Members of the Committee, thank you for giving me the opportunity to appear today in support of the proposed amendment to the American Indian Religious Freedom Act of 1978.

My name is Marilyn B. Miles, and I appear before you as the attorney for numerous northwestern California Indians, who for over a decade have been involved in a struggle to stop the Forest Service from constructing a road through the middle of an area of land the Yurok, Karok and Tolowa tribes consider to be their most sacred site. I am counsel of record for the Indian respondents in Lyng v. Northwest Indian Cemetery Protective Association, U.S. Supreme Court, No. 86-1013, in which the Supreme Court recently ruled on the applicability of the First Amendment to my clients' case.

The plight of the Yurok, Karok, and Tolowa Indians is illustrative of the problems facing Indian tribes regarding the ability to continue to maintain their traditional religious practices. For centuries, Yurok, Karok, and Tolowa Indians have used an area of land, which they hold sacred, for religious practices that constitute the heart of the Northwest Indian traditional religious belief system. That sacred area, now located within the Six Rivers National Forest, is within the aboriginal territory of these tribes and adjacent to the Hoopa Valley Indian Reservation. Today, as they have for generations, and long before the land became national forest land, individual tribal members, spiritual leaders, and medicine persons travel to the sacred area, known as the "high country", to undertake rituals and ceremonies which are an integral part of the exercise of the religious complex generally known as World Renewal. World Renewal ceremonies, such as the major ceremonies known as the White Deerskin Dance and the Jump Dance, involve specific spiritual leaders and possess particular characteristics of form and setting. The spiritual leaders are initially trained in the sacred high country and in preparation of the World Renewal ceremonies must travel to specific sites in the sacred area to obtain the spiritual power needed to conduct the ceremonies.

The tribal communities involved rely upon these ceremonies and on the ability of the spiritual leaders to use the high country to train and obtain the power needed to make the ceremonies meaningful and efficacious. The tribes' sacred area is essential also for the performance of healing rituals which are a part of this traditional religious and cultural system. Medicine women must be trained in the high country for their doctoring roles and must journey back periodically to pray, obtain spiritual power, and to gather medicines. They then return to the tribal communities to administer to the sick the healing power gained in the sacred area through ceremonies such as the Brush Dance and Kick Dance.

Additionally, individual tribal members when called to the area by the Creator make private pilgrimages for prayer, divine guidance, and in quest of personal power. The area serves literally as the training ground for the young people of these tribes to learn their tribe's traditional religious beliefs and ceremonies, and as such is necessary to preserve and convey such practices to future generations.

In 1977, the Forest Service proposed to construct a road through the middle of the sacred high country. The Forest Service's own consultants and in-house anthropologists recommended against that route because their comprehensive studies had revealed that the proposed intrusion was "potentially destructive of the very core of the Northwest Indian religious beliefs and practices. Moreover, in recognition of its ancient and continuing religious value to the Yurok, Karok, and Tolowa Indians, the Secretary of the Interior had listed the high country as a district on the National Register of Historic Places, and the federal Advisory Council on Historic Preservation subsequently recommended that the road not be built through the district.

Nevertheless, the Regional Forester selected the route through the religious use area. The proposed Forest Service road, which the courts have found will have only the most marginal and speculative utility to the Government and to the private lumber interests that might use it, will unquestionably render the above traditional practices impossible, and threatens the spiritual and cultural well-being of the affected tribes.

In the words of one of my clients, Jimmie James, a 73-year-old Yurok Medicine Man, "Our people have used this area since the beginning of times. It's things like this that we're struggling, striving, hoping, and praying that they'll leave us this one area. It's the saddest thing that could ever happen to any human being; to take his place of prayer with the Great Spirit." Northcoast View, May 1988.

I appear today not only in concern for my clients and the northwestern California tribes, but because of the knowledge that sacred sites play a critical role in the traditional religion of other tribes as well, and in recognition that the need to maintain the existing relationship to sacred locales is absolutely essential to the continuing vitality of the religious tradition and culture of American Indians. Other witnesses will undoubtedly describe to the Committee in more general terms the present status of traditional Indian religious practices and the American Indian Religious Freedom Act, so I will limit my testimony more specifically to the problem of the use of sacred sites.

The Federal Agencies Task Force report submitted to Congress in 1979 pursuant to Section 2 of the American Indian Religious Freedom Act itself confirmed that sacred sites and site-specific practices are an integral part of American Indian religions and way of life. Task Force Report, pp. 51-54. The Federal Agencies further concluded that changing of the physical conditions of these sites damaged the spiritual value of the site and endangered the continuation of the traditional religious practices and well-being of the tribal communities. Task Force Report, p. 54.

In Lyng v. Northwest Indian Cemetery Protective Association, the Supreme Court acknowledged that federal land management decisions can have "devastating effects on traditional Indian religious practices" and can "virtually destroy the Indians' ability to practice their religion;" however, it found that the First Amendment did not contemplate this type of governmental prohibition of religion and thus placed the task of protecting the indigenous practices and communities upon Congress.

Because the American Indian Religious Freedom Act of 1978 has no express enforcement procedures, it has been interpreted by the courts and the federal agencies to be merely a statement of this nation's policy, a policy which federal administrators are free to disregard with impunity. As a result, American Indians today are essentially left with absolutely no protection against perhaps the gravest threat to their religious practices: the destruction of their sacred sites by federal agencies.

Therefore, today more than ever, it is clear that a policy statement alone is not sufficient to protect and preserve Indian religion. Because they bear upon the proposed amendment as much as much as they did upon passage of the original Act, it is appropriate to stress the specific factual findings Congress made in 1978. Congress specifically found that the religious practices of American Indians "are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;" and "as an integral part of Indian life, are indispensable and irreplaceable." (S.J. Res. 102, Pub. L. No. 95-341). Thus, in a very real sense the inability to protect traditional religious practices imperils the very survival of the tribes.

I cannot concur strongly enough with the sentiments expressed by the honorable Senator from my state, Mr. Cranston, in introducing S. 2250 that "the time has come for Congress to take steps to halt the increasing infringement on the religious prerogatives of American Indians" and with the need "to strengthen the American Indian Religious Freedom Act by requiring Federal agencies to manage Federal lands so as not to impair or interfere with the exercise or practice of traditional American Indian religion." S.2250, 100th Cong., 2d Sess., Cong. Rec., March 31, 1988.

While undoubtedly more comprehensive legislation may be necessary to effectuate and implement the overall policy of the American Indian Religious Freedom Act, S. 2250 is an important step in providing real protection to the specific problem of access and use of sacred sites. Such legislation is critically needed at this time because unlike non- site-specific religious practices, the continued use of sacred sites on federal land for traditional religious practices is today totally unprotected by law.

The proposed language of S. 2250 substantially addresses the needs of my clients and appears to be in the vein of what various federal Courts of Appeals have adopted, and what the State of California has adopted relative to state lands, as a way of accommodating the competing demands placed on public land. However, I am cognizant of the concern that by limiting protection under the American Indian Religious Freedom Act to lands that have been "historically indispensable" to a traditional Indian religion, the values and needs of other tribes and areas may not be appropriately met. If the Committee is considering changes in the language, perhaps other terms such as "essential", "important", or "significant" might be appropriate instead, or perhaps the legislation could set out suggested criteria to guide the federal land managers and the district courts.

It is also our position that a minimum requirement of any supplemental legislation is the provision of a judicial remedy. Without a judicial remedy, the continuance of traditional Indian religious practices remain subject only to the goodwill of the federal agencies, and Indian tribes remain helpless to protect their ability to continue these practices. S. 2250, therefore, appropriately grants federal district courts jurisdiction to enter orders to enforce the provisions of the proposed additional section to the American Indian Religious Freedom Act.

With regard to any establishment concerns, Congress today has the authority, as it did in passing the original Act, to enact the proposed legislation to strengthen the American Indian Religious Freedom Act. It is quite permissible for Congress to accommodate free exercise values through legislation. Indeed, as the Supreme Court has stated:

> Quite apart from the question of whether the Free Exercise Clause might require some sort of exemption (footnote omitted), it is hardly impermissible for Congress to attempt to accommodate free exercise values....(citations omitted)

Gillette v. United States, 401 U.S. 437, 453 (1971).

Thus avoidance of harm to religion, while obviously a benefit to the religion, clearly does not violate the principles of non-establishment. Not only is accommodation of free exercise values a valid secular purpose, but the legislative purpose of protecting the cultural integrity and self-determination of Indian tribes is an equally valid secular interest supporting the proposed legislation.

Moreover, the plenary authority of Congress to legislate on Indian affairs is an additional basis supporting the proposed amendment. Because of the unique legal relationship between the federal government and Indian tribes, it is permissible for Congress to afford to Indians particular and special legislative treatment. Morton v. Mancari, 417 U.S. 535, 551-555 (1974).

Indeed, in keeping with its trust obligation to Indian tribes, it is incumbent upon Congress to enact the proposed legislation to ensure the continuing vitality of the religious tradition and culture of American Indians.

SUPPLEMENTAL STATEMENT OF MARILYN B. MILES
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON S. 2250

Mr. Chairman and Members of the Committee, thank you for allowing me to supplement my prepared statement with the following comments.

First, contrary to the Department of Interior's statement, nothing in the language of S.2250 authorizes bypassing the administrative process and remedies. The doctrine of exhaustion of administrative remedies is one well ingrained in our judicial system to ensure that before a court reviews an agency decision, the administrative position has crystallized and is, in fact, a final decision worthy of review.

S.2250 does not change the above, but rather provides affected Indians a cause of action so their traditional religious practices, which are so critical to their very existence, can be protected. Indeed, the opportunity to have a right to seek the protection of the courts is basic under our democratic system and constitutes the most significant safeguard yet contrived to check excesses in administrative action.

Second, S.2250 proposes a standard familiar to the federal courts. The standard provides a balancing of interests approach to this serious area of religious freedom for this country's native people. Rather than providing an absolute right (or a veto) as opposing witnesses have contended, this balancing approach places upon the religious claimant the burden of first making a showing of the importance of the affected sacred site to the traditional religious practice and of the seriousness of the infringement that will be caused by the proposed governmental action before the burden shifts to the agency to justify the proposed action.

The standard proposed by S.2250 provides the level of protection that such an important value as religious freedom is entitled. It additionally comports with the federal government's longstanding trust obligation to act to protect the interests of the Indian tribes.

Third, the notion that this amendment will have an enormous, disruptive impact on the ability of the federal government to manage federal lands is without merit. Indeed, the federal agencies themselves, including the Bureau of Land Management and the Forest Service, have found after careful study that Native traditional religious use of sacred areas is compatible with most of the purposes for which these places are now held by the federal government. See Federal Agencies Task Force, American

Indian Religious Freedom Act Report, U.S. Dept. of Interior, p. 51.

It should also be noted that the State of California adopted similar legislation relative to state public lands over ten years ago, and supports the proposed amendment. See attached letter.

Moreover, the religious free exercise protection sought by Indian people through this legislation is supported by many others. Attached is a public declaration recently adopted by the Christian Churches of the Pacific Northwest. Additionally, over 15 different religious and other concerned groups participated as amicus curiae in Lyng v. Northwest Indian Cemetery Protective Association in support of the Indians' inherent right to continue their traditional religious practices at sacred sites, including the following groups:

American Jewish Congress
Bureau of Catholic Indian Missions
Christian Legal Society
American Jewish Committee
Concerned Women for America
American Civil Liberties Union

In closing, S. 2250 would help ensure that federal agencies recognize and respect the traditional religious practices of this nation's native people. The words of Senator Abourezk, one of the sponsors of the American Indian Religious Freedom Act itself, ring true more clearly today than they did in 1978: "America does not need to violate the religions of her native peoples. There is room for and great value in cultural and religious diversity. We would all be poorer if these American Indian religions disappeared from the face of the Earth."

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 288
SACRAMENTO, CALIFORNIA 95814
(916) 322-7791

May 9, 1988

The Honorable Alan Cranston
United States Senate
Senate Hart Building #112
Washington, DC 20510

Dear Senator Cranston:

The California Native American Heritage Commission is pleased to notify you of our support of Senate Bill 2250. We believe that this legislation will strengthen the provisions of the American Indian Religious Freedom Act and be of tremendous help in ensuring that sites that are sacred to Native Americans will remain accessible and undesecrated.

We have asked reservations, rancherias and tribal organizations in California to support S. 2250 and to notify you and your co-sponsors of their support. If we can offer any further assistance, your staff may wish to contact me at the above address, telephone (916) 322-7791.

Sincerely,

Larry Myers
Executive Secretary

cc: Hon. Daniel Inouye
Hon. Dennis DeConcini
Hon. Spark Matsunaga
NAHC Commissioners

A PUBLIC DECLARATION

TO THE TRIBAL COUNCILS AND TRADITIONAL SPIRITUAL LEADERS OF THE INDIAN AND ESKIMO PEOPLES OF THE PACIFIC NORTHWEST

Dear Brothers and Sisters,

This is a formal apology on behalf of our churches for their long-standing participation in the destruction of traditional Native American spiritual practices. We call upon our people for recognition of and respect for your traditional ways of life and for protection of your sacred places and ceremonial objects. We have frequently been unconscious and insensitive and have not come to your aid when you have been victimized by unjust Federal policies and practices. In many other circumstances we reflected the rampant racism and prejudice of the dominant culture with which we too willingly identified. During the 200th Anniversary year of the United States Constitution we, as leaders of our churches in the Pacific Northwest, extend our apology. We ask for your forgiveness and blessing.

As the Creator continues to renew the earth, the plants, the animals and all living things, we call upon the people of our denominations and fellowship to a commitment of mutual support in your efforts to reclaim and protect the legacy of your own traditional spiritual teachings. To that end we pledge our support and assistance in upholding the American Religious Freedom Act (P.L. 95-134, 1978) and within that legal precedent affirm the following:

1) The rights of the Native Peoples to practice and participate in traditional ceremonies and rituals with the same protection offered all religions under the Constitution.

2) Access to and protection of sacred sites and public lands for ceremonial purposes.

3) The use of religious symbols (feathers, tobacco, sweet grass, bones, etc.) for use in traditional ceremonies and rituals.

The spiritual power of the land and the ancient wisdom of your indigenous religions can be, we believe, great gifts to the Christian churches. We offer our commitment to support you in the righting of previous wrongs: To protect your peoples' efforts to enhance Native spiritual teachings; to encourage the members of our churches to stand in solidarity with you on these important religious issues; to provide advocacy and mediation, when appropriate, for ongoing negotiations with State agencies and Federal officials regarding these matters.

May the promises of this day go on public record with all the congregations of our communions and be communicated to the Native American Peoples of the Pacific Northwest. May the God of Abraham and Sarah, and the Spirit who lives in both the cedar and Salmon People be honored and celebrated.

Sincerely,

Thomas L. Blevins
The Rev. Thomas L. Blevins, Bishop
Pacific Northwest Synod –
Lutheran Church in America

The Rev. Dr. Robert Bradford,
Executive Minister
American Baptist Churches of the Northwest

Robert Clarke Brock
The Rev. Robert Brock
N.W. Regional Christian Church

Robert H. Cochrane
The Right Rev. Robert H. Cochrane,
Bishop, Episcopal Diocese of Olympia

W. James Halfaker
The Rev. W. James Halfaker
Conference Minister
Washington North Idaho Conference
United Church of Christ

R. G. Hunthausen
The Most Rev. Raymond G. Hunthausen
Archbishop of Seattle
Roman Catholic Archdiocese of Seattle

Elizabeth B. Knott
The Rev. Elizabeth Knott, Synod Executive
Presbyterian Church
Synod Alaska-Northwest

Lowell E. Knutson
The Rev. Lowell Knutson, Bishop
North Pacific District
American Lutheran Church

Thomas J. Murphy
The Most Rev. Thomas Murphy
Coadjutor Archbishop
Roman Catholic Archdiocese of Seattle

Melvin G. Talbert
The Rev. Melvin G. Talbert, Bishop
United Methodist Church –
Pacific Northwest Conference

STATEMENT OF SCOTT M. MATHESON

OF

PARSONS, BEHLE & LATIMER
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898

On behalf of:

American Mining Congress
Timber Associations of California
Alaska Miners Association
Colorado Mining Association
Montana Coal Council
Nevada Mining Association
Northwest Mining Association
Utah Mining Association
Wyoming Mining Association

ON S.2250

Before the Select Committee on Indian Affairs
of the United State Senate
May 18, 1988

Mr. Chairman, and members of the Committee, I am Scott Matheson, of the lawfirm of Parsons, Behle & Latimer. I am appearing today on behalf of various associations representing mining and timber interests. We appreciate this opportunity to present our views on S.2250.

S.2250 is a deceptively simple, seemingly benign piece of legislation. It is neither. Its brevity and apparent simplicity disguise the fact that it will have an enormous, unpredictable, but clearly disruptive impact across the country, and especially in the West, where most federal land is located. Because of its sweeping, unqualified, yet vague language creating a statutory preference for the practice of Native American religion on federal land, S.2250 will bring chaos to the federal government's existing comprehensive programs of land use planning. It will seriously impair the interests and activities of non-Indian users of public land, and spawn endless, costly litigation. Public access to public land may well be curtailed significantly, and responsible development of natural resources will become substantially more difficult and costly. Most significantly, S.2250 will grant to one category of citizens -- Native Americans -- a veto over the government's management of its property and the public's use of public land across the country. Finally, by granting special status and preferential treatment to one particular type of religion, S.2250 will violate the Establishment Clause of the First Amendment.

Given the sweeping impact and unconstitutional character of the bill, S.2250 should not be precipitously enacted into law. Indeed, in its present form it should not become law. As it now stands, S.2250 grants absolute priority to the interests of one group over the interests of all other Americans with regard to public lands. Such is not a proper principle on which to manage federal lands. Instead, the principles of multiple use, accommodation of interests, and cooperation between parties should be the basis of the government's management of public land. Finally, S.2250 is unnecessary. Existing statutes and regulations presently in effect provide protection for Native American religions, and allow Native Americans to participate effectively in the management of federal lands.

I. THE LEGAL EFFECT OF S.2250 WILL BE TO GIVE NATIVE AMERICANS A VETO OVER USE OF FEDERAL LANDS; S.2250 WILL ALSO VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

The legal effect of S.2250 will be to give Native Americans, as individuals or groups, an effective veto power over both the government's management of its property and the public's right to use federal lands. This is so because the statutory preference for Native American religious interests will, in practice, be absolute given the language of the statute. Accordingly, all other interests and activities on public lands will be made subordinate and inferior to the religious interests of just one group of Americans. Because S.2250 grants special protection and preferential treatment to just one form of religion, S.2250 almost certainly is unconstitutional, in violation of the Establishment Clause of the First Amendment.

Effective Veto. S.2250 mandates that all federal lands be managed in a manner that would not "seriously impair or interfere with the exercise or practice of . . . traditional American Indian religion." This language would require governmental agencies responsible for managing federal lands not to permit any activity, whether it be recreation or resource development, which would "seriously" interfere with the practice of a Native American religion. This language would place a veto power in the hands of Native Americans because only Native Americans will be in a position to decide which non-Indian activities seriously interfere with their religious practices.

Indian religions are inseparably intertwined with their history and culture. They are for the most part undocumented, unwritten, and often considered secret. Consequently, there is often no impartial or objective way to ascertain the substance or character of an Indian religion, or even to determine the genuineness of any asserted Indian religious belief or practice. Government agencies and courts would effectively have to rely on, and thus wholly defer to, Indians' own description of their religion as well as accept their view of which non-Indian activities would seriously interfere with what they characterize as "religious" activities.[1] In past cases, Indians have often chastised government agencies and courts for presuming to evaluate independently particular Indian religious claims, or for attempting to determine objectively whether a particular non-Indian activity seriously interferes with a religious practice. Consequently, S.2250 would not simply protect Indian religions from improper interference, but would hand over to an unknown number of Native American groups or individuals controlling power over federal land use decisions.

Additionally, because Indians' aboriginal lands once covered all of what is now the United States, including all existing federal lands, and because Indians claim tens of thousands of sacred religious sites on federal lands, the effect of the Native American veto power created by S.2250 would be geographically all-encompassing, affecting federal land everywhere and every type of non-Indian activity on public land.

Unqualified Veto. S.2250 provides an apparent exception to this veto power in "cases involving compelling governmental interests of the highest order." This is only an apparent exception because the standard cannot, in practice, ever be met with regard to the use of federal land. The "compelling governmental interests" language is taken from Supreme Court cases in which the Court imposes the heaviest, most stringent, most difficult-to-meet burden on the government to justify its conduct. To satisfy the "compelling governmental interest" test, the government must show both that its conduct concerns "interests of the highest order" and that there exists no alternative means by which its interests can be served. Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972); Sherbert v. Verner, 374 U.S. 398, 407 (1963). The courts impose this standard only where a constitutional right of the highest order is clearly threatened. This standard is rarely used by the courts because, except in the rarest circumstances, no government activity, and certainly no private activity merely permitted or approved by the government, can satisfy this standard.

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[1] The United States Supreme Court recently pointed out that any absolute rule that federal land decisions must not "seriously" interfere with Indian religious practices on federal land would result either in the government having uncritically to accept the Indians' own assertions about their religion, or in the government improperly intruding itself into the Indians' religious beliefs and practices in order to determine when a proposed activity would truly interfere with them. The former approach would make the "serious interference" standard effectively meaningless, the latter would lead to improper governmental entanglement with religion. Lyng v. Northwest Indian Cemetary Protective Ass'n., 56 U.S.L.W. 4292, 4297 (1988).

S.2250 actually makes the "compelling governmental interest" requirement broader in its application and more difficult to meet than the Supreme Court has ever permitted. First, this standard is applied by S.2250 to protect an undefined, but clearly far broader range of Indian religious interests than those which actually rise to the level of a constitutional right. In other words, Indian interests of a lower, less-than-constitutional nature receive constitutional-level protection in S.2250. Second, S.2250 actually heightens the standard by adding the language "of the highest order" to the "compelling governmental interest" standard. This additional requirement results in the interests protected by S.2250 receiving greater protection than even constitutional rights receive. No other religion receives such extraordinary statutory preference. In sum, because non-Indian uses of federal land will never be able to satisfy the "compelling governmental interest" standard, the Native American veto over all federal land use decisions created by S.2250 will be absolute and unqualified.

Violation of the Establishment Clause. S.2250 clearly provides special protection and preferential treatment for Native American religions in the management of federal lands. This protection and preferential status is not given to any other religion. As such, the bill violates the Establishment Clause of the First Amendment. The Supreme Court has articulated a three-part test for determining when a government action violates the Establishment Clause. To be constitutional, a statute first must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; third, the statute must not foster an excessive government entanglement with religion. Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). S.2250 fails to satisfy any of these requirements. The bill has no secular legislative purpose, but rather is intended to give Native Americans preferential treatment in the management of federal land for the benefit of their religion. Second, the primary effect is to advance Native American religion because all other interests on federal lands are subordinated to Indian religion. Third, the bill will clearly create excessive governmental entanglement with religion, because it will make preference for Native American religion (and an evaluation of Indian religious practices and beliefs) a central feature of every federal land use planning decision.

The courts have already held that such preferential management of federal land violates the Establishment Clause. See, e.g., Badoni v. Higginson, 638 F.2d 172, 179 (10th Cir. 1980) (the Establishment Clause prohibits the government from restricting others' use of federal land for the "purpose of aiding [Native American] conduct of religious ceremonies"); Inupiat Community of Arctic Slope v. United States, 548 F.Supp. 182, 189 (D. Alaska 1982), aff'd, 746 F.2d 570 (9th Cir. 1984) ("the First Amendment may not be asserted to deprive the public of its normal use of an area"). Justice Brennan recently warned against the government giving this kind of religious preference in the use of public land: "Should [American Indians] or any other group seek to force the Government to protect their religious practices from the interference of private parties, such a demand would implicate . . . the concerns . . . of the Establishment Clause." Lyng, 56 U.S.L.W. at 4302 (Brennan, J., dissenting). In sum, S.2250 would, by giving Indian religions a protected, preferential status, make them established religions, in violation of the Constitution.

II. S.2250 WILL HAVE AN ENORMOUS AND DISRUPTIVE IMPACT ON PUBLIC LANDS THROUGHOUT THE COUNTRY.

S.2250 will have an enormous, disruptive impact because of its application to all federal lands. The federal government owns 732 million acres of land, over 566 million of which are located in Alaska, Arizona, California, Hawaii, Idaho, Oregon, and Washington. Bureau of Land Management, Public Land Statistics 10 (1984). Federal land constitutes a majority, often an overwhelming amount, of the land area of many western states. Additionally, much of the country's natural resources are located on federal land. For example, federal lands contain 85% of the nation's crude oil, 40% of the natural gas, 40% of the uranium, 35% of the coal reserves (60% in the West), and 50% of the standing softwood timber. U.S. Dept. of Energy, Securing America's Future Energy: National Energy Policy Plan at 1 (1981); Council on Environmental Quality, Environmental Quality at 351 (1986).

Thus, it is obvious that S.2250, by creating a Native American veto over federal land use decisions, will greatly affect all the western states, and most certainly severely interfere with the orderly use and development of the country's natural resources. For these reasons alone, S.2250 should not be hastily enacted into law, but should be considered carefully on the basis of thoroughly developed information and substantial public involvement.

Because of the absolute and all-encompassing nature of Indian religious claims to the public lands, S.2250 will clearly disrupt and likely severely harm the management of public land. Non-Indian users of federal land will also be substantially affected, and almost certainly be harmed by S.2250's preference for Indian religious claims on federal lands. A few examples of Indian religious claims will illustrate their enormous scope and potential impact.

The G-O Road Case. In northern California, the Forest Service attempted to pave a six-mile section of an existing road (the "G-O road") through a national forest and also to open up a portion of the area for logging. Indian tribes objected, arguing that an entire twenty-five square mile area was sacred country, which had to be maintained in a completely pristine, natural state for the practice of their religion. The Forest Service attempted to accommodate the Indians' religious concerns by relocating the proposed road so as to be most distant from where the Indians actually carried out their religious practices. In addition, the Forest Service offered to set aside 500 acres, free from development, around each of the eleven sacred sites identified by the Indians. The Indians rejected this offer, demanding that the entire area be kept totally free from the proposed activity so that they could enjoy the privacy, silence, and naturalness they deemed necessary for their religion.

Because of the sweeping, unqualified character of the Indians' religious claims, the United States Supreme Court concluded that the Indians were demanding exclusive "de facto beneficial ownership" of the entire area, in spite of the fact that "[n]o sites where specific rituals take place were to be disturbed." Because of the absolute nature of the Indians' religious demand for "their" religious territory, the Supreme Court found that "all human activity," not just logging or road building, would in principle have to be excluded from the entire area to satisfy the Indians' religious demands. Lyng, 56 U.S.L.W. at 4295-96.

Sweet Grass Hills Case. In this case, currently pending before the Interior Department Board of Land Appeals, the Blackfeet Tribe is seeking effective control over an area of 210,000 acres of public and private land in north central Montana. The Tribe claims that the entire area has religious significance, though it has not to date identified even one specific religious site. The only development project at issue is a proposal to construct six drill sites, six exploratory drill holes, and less than two miles of access road. In spite of the quite limited nature of the proposed project, the Tribe is demanding that the entire 210,000 acre area be kept free from any development activity because of the area's alleged religious significance to the Blackfeet. Blackfeet Tribe v. BLM, IBLA 86-1440.

The Navajo-Hopi Land Dispute. In this case, currently pending in the United States District Court for the District of Columbia, a group of 52 Navajos is claiming the right to an area of Hopi land on the ground that their possession and use of the area is essential to their practice of religion. The Navajos identify 81 religious sites in the area, although as recently as

1975 they had claimed only that two religious sites were in the area. On the basis of these religious sites, the Navajos assert that their rights under the American Indian Religious Freedom Act and the First Amendment would be violated if they were not permitted to remain in control of the area. See Complaint and Hopi Memorandum, Manybeads v. United States, No. 88-0181-GAG.

The Havasupai -- Canyon Mine Case. In this case, currently pending before the Chief of the Forest Service, the Havasupai oppose the development of a small (17 acre), underground mine, on the ground that its existence is inconsistent with their religious beliefs and practices. In support of their position, the Havasupai claim that their area of religious significance encompasses the entire (but imprecisely defined) territory between the Grand Canyon in the north and the cities of Williams and Flagstaff, Arizona in the south. The claimed area is well over a million acres. In this area, the Havasupai claim to have over a thousand sacred religious sites. See Havasupai testimony before the Regional Forester, May 14, 1987, at 50, 60; Havasupai testimony before the Office of the Chief, February 27, 1987, at 50, Canyon Mine Appeal, Forest Service Nos. 1874, 1868. Indeed, the Havasupai claim that "[a]ll of the springs and seeps" on their aboriginal lands (2.2 million acres) are sacred and essential to the preservation of their religion and culture. Canyon Mine Final Environmental Impact Statement, Appendix G at 74.

The Acoma Tribe -- El Malpais National Monument Dispute. The Acoma Indians opposed the creation of the El Malpais National Monument and a related conservation area on religious grounds. They argued that they practice their religion and have numerous religious sites throughout a 13,000 acre area of federal land. Consequently, they insisted that the area should not be included in the monument and conservation area because such inclusion would interfere with the Acomas'religious practices, by opening up the area to public use. Stumbo, Tribe Fights to Preserve Sacred Land, L.A. Times, Dec. 26, 1987, pt. I, at 1, col. 1.

The above examples illustrate the enormous scope and all-encompassing nature of Indian religious claims. Every imaginable use of federal lands can be, and has been, said to interfere with Indian religious practices. Thus it is clear that S.2250, by creating a statutory preference for Indian religious interests, will impair greatly the public's access to federal lands, harm the development of the nation's natural resources, and interfere severely with the government's management of public lands.

III. S.2250 IS NOT NECESSARY BECAUSE NUMEROUS EXISTING STATUTES AND REGULATIONS PROVIDE ADEQUATE PROTECTION TO NATIVE AMERICAN CULTURE AND RELIGION.

In his introductory remarks to S.2250, Senator Cranston referred to a 1979 Federal Agency Task Force report which contained an evaluation of various federal agencies' policies and procedures as they affected the practice of Native American religions. See 134 Cong. Rec. 53544-02 (daily ed. March 31, 1988). That report concluded that due to ignorance and prevailing attitudes, federal policies were often directly or indirectly hostile or indifferent toward traditional Native American religions. While the Task Force report may have painted an accurate portrait of the situation as it existed in 1979, it does not reflect the practices and policies of federal land management agencies today. Indeed, as the following discussion indicates, the statutes and regulations governing the Forest Service and the Bureau of Land Management ("BLM") give Indian tribes a special measure of influence when it comes to land management decisions. Far from being indifferent or hostile to Native American religious concerns, the Forest Service and BLM, in compliance with their regulations and policies, act to involve Indian tribes and accommodate their religious concerns in every aspect of public land management.

Because S.2250 is an amendment to the American Indian Religious Freedom Act ("AIRFA"), it is appropriate first to point out that the Forest Service and BLM have, since the Task Force report was published, incorporated the purposes of AIRFA into their land management planning procedures.

The National Forest Management Act, 16 U.S.C. SS 1600-1614 (1982), requires the Forest Service to develop and adopt land and resource management plans for the National Forest system. Among the principles on which forest planning must be based is the protection and preservation of the inherent right of American Indians to believe, express, and exercise their traditional religions. 36 C.F.R. § 219.1(a)(6)(1987). In addition, the Forest Service is required to identify, protect, and manage all significant cultural resources on National Forest lands, including Native American cultural resources. Id. § 219.24. The Forest Service is also required to coordinate regional and forest planning with the planning efforts of Indian tribes, to notify tribes whose lands or treaty rights are expected to be affected by the agency's activity, to review and consider the objectives of Indian tribes as expressed in their plans and policies, and where conflicts are identified, to consider alternatives so that the conflicts may be resolved. Id. § 219.7. In short, the Forest Service's land management planning already gives special treatment to Indian tribes as interested parties, and expressly provides that American Indian religious practices must be respected.

The Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701-1784, requires the Secretary of the Interior to develop and implement land use plans for the use of public lands administered by the BLM. 43 U.S.C. § 1712. The BLM, under its regulations implementing FLPMA, is required to provide for meaningful involvement of Indian tribes in the development of resource management plans. 43 C.F.R. § 1610.3-1(a). The BLM is expressly required to provide "Indian tribes opportunity for review, advice, and suggestion on issues and topics" of importance to them. Id. § 1610.3-1(b). The BLM is also required to notify Indian tribes when it intends to prepare, amend, or revise a resource management plan. Id. § 1610.3-1(d). The importance of Native American religion and the requirement for consultation with Native Americans is expressly incorporated into the BLM Manual, part 1623.14(b), which provides:

> [P]ursuant to the American Indian Religious Freedom Act, Indian tribal leaders should be consulted with respect to any management and objectives which might affect tribal religious values. . . . Federal agencies must obtain and consider the views of Indian leaders during the land use decision making process, and avoid unnecessary interference with Indian religious practices during project implementation.

In sum, the Forest Service and the BLM are both required to consider and respect American Indian religious concerns in their land use planning. Native American religious values can be protected by the agencies in the ongoing planning process if the Native Americans will advise the agencies in advance of the need for protection. Once a Native American interest receives protection in a land use plan, an agency cannot permit subsequent actions that are inconsistent with that interest.

Aside from the statutes and regulations governing public land planning, a variety of other statutes applicable to the Forest Service and the BLM help ensure that Native Americans are involved in land management decisions.

The National Environmental Policy Act ("NEPA"), 43 U.S.C. § 4321, requires federal land management agencies to prepare environmental impact statements for major federal actions having a significant effect on public lands. As part of the process for determining the scope of issues to be addressed in an environmental impact statement, agencies are specifically required to invite the participation of affected Indian tribes. 40 C.F.R. § 1501.7(a)(1).

Under the National Historic Preservation Act, 16 U.S.C. §§ 470-470w-6, the head of any federal agency having jurisdiction over a proposed federal undertaking, or having authority to license any non-federal undertaking, must take into account the effect that such activity may have on any site that is eligible for inclusion in the National Register of Historic Places. This includes sites that are "significant in American history, architecture, archaeology, engineering or culture." 36 C.F.R. § 60.1. Under the regulations implementing the Act, federal agencies such as the Forest Service and the BLM must determine whether their management activities will adversely affect significant historical or cultural sites. Where adverse effects may result, the agencies must consult with interested parties, such as Indian tribes, to avoid, mitigate or minimize the adverse effects. See 36 C.F.R. §§ 800.4, 800.6.

Indian tribes also receive special consideration under the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-470ll. The Act prohibits the disturbance or destruction of archaeological resources, including Native American religious and cultural sites, located on public lands except under a permit issued by the appropriate federal land manager. If issuing a permit, under the act, may harm or destroy any Indian religious or cultural site, the federal land manager must notify and consult with concerned Indian tribes.

The Forest Service and the BLM have adopted uniform regulations for the protection of archaeological resources. These regulations specifically require federal land managers to take into consideration the American Indian Religious Freedom Act when issuing permits for the excavation or removal of archaeological resources. 43 C.F.R. § 7.1(a); 36 C.F.R. § 296.1(a). In addition, representatives of any Indian tribe may request to meet with the federal land manager to discuss their interests, including ways to avoid or mitigate potential harm or destruction, such as excluding particular sites from a permit area. See, e.g., 36 C.F.R. § 296.7(a)(3). Federal land managers are also required to attempt to identify all Indian tribes having aboriginal or historic ties to the lands under that manager's jurisdiction and to determine the location and nature of specific sites of religious or cultural importance so that information may be kept on file for land management purposes. Id. Land managers may also enter into agreements with Indian tribes for determining locations for which such tribes wish to receive notice. Id.

A recent example of cooperation between the Forest Service and Indian tribes illustrates how these regulations protect Indian religious and cultural values. The Southern and Eastern Regions of the Forest Service have, in conjunction with Indian tribes, implemented a policy of leaving intact and undisturbed both prehistoric and recent gravesites and homesteads.

Under the policy, Forest Service managers in each state deal directly with tribes to work out a plan to handle each grave site. In West Virginia national forests, this policy applies even though there are no active American Indian tribes left in the state. See Old Burial Site to Remain Intact Under a New Federal Policy, N.Y. Times, May 10, 1988, at A 26, col. 1.

Most of the regulations and policies outlined above took effect after the 1979 Task Force report cited by Senator Cranston. Whatever the policies of the federal land management agencies may have been with regard to Native American religion before that time, it cannot be presumed that those agencies today are calloused or indifferent to Native Americans. Under existing statutes, regulations and policies, Indian tribes are given the opportunity to play a meaningful role in land management decisions. By availing themselves of these opportunities, Native Americans can gain substantive protection for their religious and cultural interests and activities.

IV. RECOMMENDATIONS BASED ON THE PRINCIPLES OF MULTIPLE USE, ACCOMMODATION OF INTERESTS, AND COOPERATION AMONG PARTIES.

S.2250 should be very carefully considered before any further action is taken on it. Among the issues which should be fully examined are the following:

A. The impact of S.2250's preference for Indian religious interests on the government management of federal lands.

B. The impact of S.2250 on the responsible development of natural resources on federal lands.

C. An up-to-date assessment of the adequacy of existing statutes, regulations, and agency policies in responding to the religious concerns of American Indians.

D. An assessment of the nature and extent of the participation of Native American groups in federal land use planning and decision making under existing law to evaluate, not only the responses of federal agencies, but also the attitudes of Native American groups to factual disclosure, compromise, accommodation and litigation.

E. An assessment, based on precise, detailed factual information, of the extent of Indian religious use of federal lands, including a determination of the number and location of Indian religious sites, which under S.2250 might prohibit or impair otherwise lawful activities on federal land.

F. An examination of the constitutionality of S.2250.

If any legislative action is taken with respect to Indian religious use of federal lands, it should be based on the principles of multiple use, accommodation of interests, and cooperation among interested parties. It should not be based on the principle of giving preferential treatment to one group to the disadvantage of all others. Many existing statutes provide for multiple uses of federal lands while providing effective protection for Native American religious concerns. For example, the act establishing the Mono Basin National Forest Scenic Area provides that the government "shall ensure nonexclusive access to Scenic Area lands by Indian people for . . . traditional cultural and religious purposes." The act also mandates that the Forest Service consult with Indian tribes to identify their cultural and religious uses of the area. 16 U.S.C. § 543f. Similarly, the recently passed El Malpais National Monument Act, Public Law No. 100-225 (December 31, 1987), guarantees "nonexclusive access to the monument and the conservation area by Indian people for . . . traditional cultural and religious purposes." This approach of mutual respect and accommodation of multiple interests, rather than unilateral preference for one group, should be the basis of all legislation concerning the management of federal lands.

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TESTIMONY OF WILLIAMS MEANS TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

CONSIDERING THE STATUS OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OFFERED ON BEHALF OF YELLOW THUNDER CAMP

Dear Honorable Senators and Committee Members:

I am pleased to be before you to address remarks concerning the current status of the American Indian Religious Freedom Act ("AIRFA").

The need for religious freedom is articulated within the AIRFA to extend broadly. The reach is into prisons, protection of the remains of our ancestors from desecration, intrusions into our sacred land, etc. The policy, however, is not being followed. Thousands of bones from our ancestors remain in the Smithsonian Institute. Grave robbing continues with the justification of scientific advancement. Roads are made to crisscross sacred sites with little concern as to their effect. Prisons that solicit the involvement of priests, ministers and rabbis, habitually exclude our spiritual leaders. Something must be done to translate good wishes to enforceable legislation.

In 1981, I, and others, were forced to initiate legal action in order that we might have access to sacred sites within the Black Hills. We were successful in U.S. District Court and currently the Yellow Thunder Camp is maintaining a continued existence in the Black Hills with the U.S. Forest Service being enjoined from removing us. The Government has, however, appealed the Court Order allowing us to have access in the Black Hills

National Forest. The Court found that despite the sacred nature of the Black Hills to the Lakota and other tribes we were denied access equal to such groups as a motorcycle club, a hunting club, a golf course, and Christian Churches whom have always been granted special use permits when requested while our people have always been denied. In fact, the evidence found by the Court was that during the five and one-half year period prior to the commencement of the Yellow Thunder trial, fifty-eight (58) caucasian oriented groups applied for special use permits and each received such. Three Indian groups, including the Yellow Thunder Camp, applied and were denied.

We shared with other Indian peoples a faith that our religious pursuits were at last achieving an equal recognition when the AIRFA was passed in 1978. However, we learn now that the Act is only a statement of policy and does not set binding standards to which the United States must account. Even in our own case (United States v. Means, consolidated with Means v. Mathers, 627 F.Supp. 247 (D.S. D., 1985) and Final Order, January 12, 1987), Judge Donald O'Brien, who expressed outrage as to the discriminatory and exclusionary acts committed against us, found the AIRFA to be essentially "an expression of public policy and, thus, public interest." He thus states that his reference to the AIRFA "is solely for the purpose of demonstrating that Congress has spoken to the need for fair federal policy in the area of American Indian religious freedom. " He goes on to find that the Forest Service actions he was considering were not in accord with the above quoted Congressional Dictate.

The 1868 Sioux Treaty guarantees our right to religious observance within the Black Hills. In order to facilitate such, Judge O'Brien enjoined the efforts of Forest Service to remove us. He did so primarily on anti-discrimination principles, the First Amendment, and upon finding a lack of Due Process in Forest Service Procedures. The type of situation we were facing, i.e., exclusion from the sites central to our religion, is precisely where the AIRFA should have been available with teeth to assure our religious beliefs received some respect by Government agencies. Unfortunately, we found that the AIRFA failed the test and was available only to cite general policy while our Court victory rested on other authority.

The need for an Act expressing the principles of the AIRFA but providing specific directives, is very apparent from a reading of the recent Supreme Court determination in Lyng v. Northwest Indian Cemetery Protective Association, issued April 19, 1988. In that case the majority found that even assuming that a several mile road designed to promote timber harvesting would "virtually destroy the Indians' ability to practice their religion" the desire of the Federal agency, (Forest Service, again) must be predominate. The Court finds that the Government ownership of the land essentially permits the Government to do anything it wishes to the land, even if it destroys the religious life of a people. They note that the opinion should not be read "to encourage governmental insensitivity to the religious needs of any citizen" but any government agency now has a license to be insensitive.

The Supreme Court indeed finds it difficult to see how the Forest Service "could have been more solicitous" since they sought opinion and even paid for the issuance of a report finding little need for the road and a great need for the lands for religious purposes by the affected tribes. It notes:

> "Such solicitude accords with 'the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian. . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rights.'"

In regard to the AIRFA, the Court notes that the Forest Service review satisfied the Act and that within the AIRFA there is not "so much as a hint of any intent to create a cause of action or any judicially enforceable individual rights."

If Congress means what it has expressed about the need to protect the religious pursuits of Native peoples, the time has come where legislation specifying judicially enforceable individual rights must be enacted. Congress has done so in many areas and Native peoples cannot be expected to be satisfied by nice statements without force of law issued by a body whose function is to make law.

The AIRFA expressly recognizes the adverse impact land use decisions and other governmental actions frequently have on sacred sites and specific religious activities of American Indians. Because of the Court's narrow view of protection of

Indian religious sites and practices, the task now falls to Congress to define not only its concerns but to specify enforceable mechanisms to ensure that a process remains available for us to follow.

Justice Brennen in his dissent specifies, quite articulately, the dimensions of the injuries to Native Religion that may follow the majorities determination:

> In the final analysis, the Court's refusal to recognize the constitutional dimension of respondents' injuries stems form its concern that acceptance of respondents' claim could potentially strip the Government of its ability to manage and use vast tracts of federal property. In addition, the nature of respondents' site-specific religious practices raises the specter of future suits in which Native Americans seek to exclude all human activity from such areas. These concededly legitimate concerns lie at the very heart of this case, which represents yet another stress point in the longstanding conflict between two disparate cultures-the dominant western culture, which views land in terms of ownership and use, and that of Native Americans, in which concepts of private property are not only alien, but contrary to a belief system that holds land sacred. Rather than address this conflict in any meaningful fashion, however, the Court disclaims all responsibility for balancing these competing and potentially irreconcilable interest, choosing instead to turn this difficult task over to the federal legislature. Such an abdication is more than merely indefensible as an institutional matter; by defining respondents' injury as "non constitutional," the Court has effectively bestowed on one party to this conflict, the unilateral authority to resolve all future disputes in its favor, subject only to the Court's toothless exhortation to be "sensitive" to affected religions. In my view, however, Native Americans deserve-and the Constitution demands-more than this.

Justice Brennen notes that he finds it "difficult . . . to imagine conduct more insensitive to religious needs than the Government's determination to build a marginally useful road in the face of uncontradicted evidence that the road will render the practice of respondents' religion impossible." He continues noting that he does not believe that the Indian people affected "will derive an solace from the knowledge that although the practice of their religion will become more difficult as a result of the Government's actions, they remain free to maintain their religious beliefs." He continues; "Given today's ruling, that freedom amounts to nothing more than the right to believe that their religion will be destroyed. The safeguarding of such a hollow freedom not only makes a mockery of the 'policy of the United States to protect and preserve for American Indians their inherent right to believe, express, and exercise the[ir] traditional religions,' it fails utterly to accord with the dictates of the First Amendment. I dissent."

The answer is clearly legislative. In fact, the Supreme Court majority, by analyzing the perimeters of the reach of the AIRFA implicitly suggests that legislation with teeth rather than limited only to policy would achieve enforcement by the Court.

The dissent in Lyng v. Northwest Indian Cemetery Protective Association, suggests an approach which deserves further attention by your committee for possible inclusion within a statute. It suggests that Indian people seeking to assert religious pursuits show some "centrality" of the desired activity or location sought to be protected with the government then having the burden to show a compelling state interest sufficient to justify infringement of the practices. As the dissent notes, it would not be incumbent upon an Indian group to show that a governmental land use decision would eradicate their faith. It would be enough to show that the lands are sacred.

Our own experiences at Yellow Thunder is that Federal Agencies are capable of lies, deceit and bending of the law. Indeed, the District Court found that "Forest Service policy as implemented. . .including [the] decision to deny the special use permit-have the effect of discriminating against Indians who are trying to practice their religion." The Court found that the Forest Supervisor was "subconsciously biased against Indians and that Forest Service Policy is skewed such that it discriminates against Indian applicants." Our experience with his decisionmaking leads us to have no confidence in Federal Administrators as the final determinators of our religious liberty.

The observation that Judge O'Brien made concerning the Forest Supervisor who attempted to deny us our rights is a fit observation to make about Congress should Congress refuse to take further steps necessary to protect the goals set forth in the AIRFA. Judge O'Brien notes that the Forest Supervisor "acknowledges that Indian people should be treated equally but just can not bring himself to see that that happens."

Congress has acknowledged that we should be treated equally and with respect. We now call upon Congress to see that it does happen.

STATEMENT OF THE
AMERICAN JEWISH CONGRESS
IN SUPPORT OF S.2250
BEFORE THE
SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
JUNE 30, 1988

In Lyng v. Northwest Indian Cemetery Protection Association, 108 S.Ct. 1306 (1988) the Supreme Court held that the First Amendment's Free Exercise Clause did not offer any protection against thoughtless, and, indeed, needless, governmental interference with sites held sacred by Native Americans which happened to be owned by the United States, finding an absence of coercion to abandon the Native American faith. In that case, too, the Court emasculated the American Indian Religious Freedom Act, (AIRFA) Pub. L. 95-341, 42 U.S.C. §1996, holding that it was precatory only, without any binding effect. Perhaps in recognition of the fact that, whatever the legal justification, the decision was out-of-step with the minimal demands of a pluralistic society, the Court virtually invited Congressional action to protect the interests of the Native Americans in this and like situations, 108 S.Ct. at 1327. The American Jewish Congress believes that Lyng was wrongly decided, because, as Dean Norman Redlich, chair of AJCongress' Commission on Law and Social Action remarked after the decision: "This [decision] can only be the result of an overly constricted understanding of the meaning of coercion, so that it applies only to direct financial or criminal penalties. This flies in the face of logic and common sense. In the real world, government coerces as much by its practice and behavior as by the mere imposition of fines. The Court badly needs to bring its definition of coercion into accord with reality."

The bill now before the Committee to amend the AIRFA, S.2250, and to protect the interests of the Native Americans in the Lyng and like situations, responds in part to that invitation.

We believe that S.2250 charts a proper course between allowing government unfettered discretion over public lands, on the one hand and the creation of an unyielding religious servitude on the other, with all the Establishment Clause difficulties that would entail. It likewise charts a proper course between the needs of Native Americans and the sometimes pressing needs of surrounding communities or the Nation at large to exploit natural resources. Given our constitutional tradition, S.2250 properly tilts that balance in favor of religious liberty.

S.2250 will not end all disputes between Native Americans and those, including states, who seek, sometimes for the best of reasons, to develop publicly owned lands. Nor does it undo all the damage done by Lyng to the fabric of the law. It does offer a sound framework with which to resolve disputes between Native Americans and the government over the use of federally owned lands. While we urge its passage, we also urge that Congress promptly examine the larger issues raised by the Lyng decision.

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TESTIMONY ON S. 2250
A BILL TO AMEND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

Mr. Chairman and Committee members. Thank you for inviting us to submit testimony to this Committee. The Association on American Indian Affairs, Inc. (AAIA) is a national non-profit citizens' organization headquartered in New York City and dedicated to the preservation and enhancement of the rights and culture of American Indians and Alaska Natives. The policies of the Association are formulated by a Board of Directors, the majority of whom are Native Americans.

The Association is deeply concerned about the decision of the United States Supreme Court in Lyng v. Northwest Indian Cemetery Prot. Assn. (the so-called "G-O Road" case). By holding that the Government is not constrained by the First Amendment in the management of its land, this decision greatly threatens the free exercise of Indian religions and, in many cases, the ability of the religions themselves to survive. Congress must take action to ensure that Indian religions are accorded the same respect and protections provided to other religions.

American Indian religions are based on the natural world. Religion, social organization, political life, the economic system and spatial order are interconnected and subject to the forces of nature and the spirits of the universe. From one generation to the next, continuity is maintained through the natural world. In essence, Indian religions are land-based theologies which entail site-specific worship. Sacred places of power can be thought of as amplification points for human, psychic and spiritual energy. This type of worship is indispensable to the practice and preservation of Native religions. The survival of a religion may be threatened by man-made changes to or an outsider's use of a particular site.

Many sacred sites can be found on Federal lands. It is for that reason that the G-O Road decision is so dangerous. In G-O Road, the court held that the "freedom of religion" clause in the First Amendment does not restrict the management of its lands by the Government even if certain Governmental actions would infringe upon or destroy a religion, so long as: (1) the Government's purpose is secular and not specifically aimed at infringing upon the religion; and (2) the Government's action does not coerce individuals to act contrary to their religious beliefs. The effect of this decision is to prevent practitioners of Indian religions from challenging Government land management decisions even when those decisions impair or destroy their ability to practice their religion.

INDIAN RELIGIOUS FREEDOM TESTIMONY: 6.2.88

S. 2250, introduced by Senator Cranston, is an improvement over existing law in that it provides aggrieved practitioners of Indian religions with a legal cause of action. We are pleased that the sponsor and cosponsors of the bill are interested in providing further protection for Indian religions.

S. 2250, as an amendment to the American Indian Religious Freedom Act, is inadequate, however. The indispensability standard in the bill will place an unduly onerous burden on Indian religious practitioners which will infrequently be met by those practitioners. The Government's land management practices will likely be little affected by S. 2250.

Moreover, the restrictive standard in S. 2250 is unfair because it requires Indian religious people to show the virtual destruction of a religion before it is accorded protection --a far greater burden than the First Amendment places upon other religions. The First Amendment has been interpreted to elevate Amish religious belief and practice over compulsory schooling laws and Seventh Day Adventist belief and practice over unemployment insurance laws. In both cases, the religious plaintiffs were not required to show that the religious practice in conflict with government policy was "indispensable" to the practice of their religion. Rather they merely needed to show that the practice was based upon their religious belief and the burden then shifted to the Government to justify the governmental action in question.

We believe that this legislation should be similarly structured. Once a site is established as sacred, the burden should then be placed upon the Government to show that its management practices are appropriate. Because of the site-specific nature of much of American Indian religious belief and practice, such protection is essential for the free exercise of Indian religions. To deprive sacred sites of protection or place enormous burdens on Indian religions to show the "indispensability" of a given site provides those religions with only second-class protection. Thus, we offer the following changes to S. 2250 reflecting the above approach for the Committee's consideration:

(1) a new Section One would be added to Public Law 95-341 which restates verbatim as Findings of Congress the whereas clauses of the preamble to the original American Indian Religious Freedom Act of 1978, such findings to be enumerated 1(a) through 1(j).

(2) a new Section 3 would be added to read as follows:

"Where Federal lands contain American Indian sacred sites, the Government shall take no action in regard to its management of the land unless its action

(1) does not seriously impair or interfere with the exercise or practice of an American Indian religion; or

(2) addresses governmental interests of the highest order using the least restrictive means possible.

American Indian sacred sites shall be defined as those sites which are utilized for rituals, ceremonies or practices required in American Indian religions or which otherwise have religious significance to the practitioners of a Native American religion."

(3) a new section 4 would be added to read as follows:

"(a) United States district courts shall have the authority to issue such orders as may be necessary to enforce the provisions of this section.

(b) Individual American Indians or Indian tribes aggrieved by the actions of federal departments and agencies in violation of the provisions of this Act have standing to sue in the federal district court having jurisdiction over such case or controversy to enforce the provisions hereof. Once the existence of a sacred site has been established by a petitioner, the Government shall have the burden of proving that one of the exceptions in section 3 applies. This burden of proof can only be met if specific factual proof is presented to the court. Mere assertions of national health, safety or welfare or other similar considerations are not sufficient to satisfy this requirement."

In our view, the basic advantage of this version of S. 2250 is that it places Native religions on the same footing as other religions in this country. Once the practitioner advances evidence to establish the religious nature of the site, the burden is placed on the Government to prove that its proposed actions affecting Native religious sites do not infringe upon an Indian religion, or, if they do infringe, that the actions are critically important to the interests of the United States and the least restrictive means possible to achieve those interests. This approach avoids having to define the concept of centrality or indispensability. It eliminates the need for Indian people and tribes to convince courts who do not understand [or accept] their fundamentally different way of looking at the world of the "strength" of a particular belief or practice. And it rightfully forces the government to justify actions which impair religious freedom.

The Committee should be aware, however, that even these proposals only deal with part of this issue. There are other concerns such as the sanctity of Indian religious practices and access to and protection of non-Federal sacred lands. Even our altered version of S. 2250 is only a first step toward the full and equal protection of Indian religions.

We would emphasize that it is important for the Committee to obtain input from Indian Country -- from Indian religious leaders and others directly affected by the ruling. Field hearings are essential. The Committee should be prepared to engage in a long-range, on-going effort to provide Indian religions with the same protections accorded other religions.

We are prepared to continue to work with the Committee toward the goal of ensuring that Indian religions are fully protected by the laws of this country. Thank you for inviting us to submit this testimony.

DRAFT

TESTIMONY

OF

COLVILLE CONFEDERATED TRIBES
AS
PRESENTED BY MATHEW DICK
CHAIRMAN, CULTURAL COMMITTEE
OF COLVILLE BUSINESS COUNCIL

May 25, 1988

Mr. Chairman, I would be honored to have this testimony read into the record in support of S. 2250; a proposed amendment to the American Indian Religious Freedom Act.

We, as Indian people are descendants of an oral tradition, as such most Native Americans are dependent on this teaching method to sustain our own unique religious practices, traditions and customs.

S. 2250 will provide a legal process by which these teachings can be preserved for future generations to come. So that once more our Indian people can freely practice their religion and ceremonies undisturbed, and in full view of an unsullied, natural environment that serves to strengthen our communication with the Great Spirit God.

S. 2250 will provide to the United States District Courts adequate authority to enforce the true intent of this Act.

Ten years ago, Congress seen fit to enact the American Indian Religious Freedom Act. If I may borrow a quote from Alan Cranston: "Which sets forth the policy of the United States to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians, their inherent right of freedom to believe, express, and exercise their own traditional Religions".

The Act was also to include specific policies enacted by Federal Agencies to carry out and implement such regulations and procedures in cooperation with affected tribes, to insure "minimal" interference with religious, ceremonial practices determined significant and unique to the affected tribes' own Religious Practices.

Here in America, where freedom over all citizens is equal, it is ironic that ignorance/attitudes, and even prejudice against another belief system, can interfere with the freedom of belief. Whereby, Native Americans, individual tribal groups, and leaders become situated between the strong and influential, thus making our traditional belief system a "poor man's" religion. Our communication with the Great Spirit God is dependent on the unspoiled, unchanged resources we use as part of this ceremony. The clean air, water, natural nectar and settings are important parts of these rituals to bless our food, game, resources.

We, the Colville Confederated Tribes, submit to you this testimony in support of Amendment to PL 95-341, S.2250, American Indian Religious Freedom Act.

Thank you.

Mathew Dick, Jr.

Mathew Dick, Chairman
Cultural Resources Board
Colville Confederated Tribe

STATEMENT BY THE PUBLIC LANDS COUNCIL, NATIONAL CATTLEMEN'S ASSOCIATION AND NATIONAL WOOL GROWERS ASSOCIATION BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 2250, A BILL "TO ENSURE THAT LANDS ARE MANAGED IN A MANNER THAT DOES NOT IMPAIR THE EXERCISE OF TRADITIONAL AMERICAN INDIAN RELIGION", JUNE 10, 1988

The Public Lands Council, National Cattlemen's Association, and National Wool Growers Association appreciate this opportunity to comment on S. 2250, a proposed amendment to the American Indian Religious Freedom Act introduced by Senator Alan Cranston of California.

The livestock industry strongly supports every individual's right to exercise his or her religion. This bill, however, goes far beyond that right, which is already guaranteed under existing law. S. 2250 states:

> "Except in cases involving compelling governmental interests of the highest order, Federal lands that have been historically indispensable to a traditional America Indian religion shall not be managed in a manner that would seriously impair or interfere with the exercise or practice of such traditional American Indian religion."

If enacted, this legislation would give Native Americans enormous power, and in effect veto power, over public land management and use. It would essentially allow Native Americans to block other uses of the public lands such as mining, timbering, livestock grazing, water development, wildlife management, recreation, or any other use that impairs their religious sites. The effects are unknown but potentially enormous. No one knows how many such religious sites exist, where or how large they are, how much land would or could be affected, or what other activities could be impacted.

As BLM noted, the basic premise of the bill appears to be that Native American religious use of federal land should be the primary use of those lands. This flies in the face of numerous laws that direct that our national forests, BLM lands, national parks, wildlife refuges, military lands, and other federal lands totaling some 727 million acres, or one-third of the land in this nation, shall be managed for a variety of uses as determined through the land use planning process or as directed by Congress.

The American Indian Religious Freedom Act already requires the federal government to protect and preserve Native American religious rights and practices. Recently the Supreme Court ruled in Lyng vs. Northwest Indians Cemetery Protective Association that this law does not create any legal rights that can be enforced against federal agencies. The court said that Indian rights "do not divest the government of its right to use what is, after all, its land."

This bill would grant Native Americans preferential treatment to one particular type of religion and therefore violates the Establishment Clause of the First Amendment. It also bypasses any kind of administrative relief in case of problems, and instead authorizes direct court review.

For all of the above reasons, the livestock industry and especially those of us who operate on federal lands oppose this legislation.

- -

The Public Lands Council represent the 27,000 ranchers who graze cattle and sheep on federal lands in 13 western states, and coordinates the public land policies of the National Cattlemen's Association, National Wool Growers Association, and the Association of National Grasslands. The National Cattlemen's Association is a non-profit trade association representing approximately 230,000 professional cattlemen throughout the nation, including individual members, 48 affiliated state cattle associations, and 23 affiliated national breed organizations. The National Wool Growers Association represents the nation's 113,000 lamb and wool producers, including 38 state organizations, associated organizations and companies, and individual members.

STATEMENT

of the

BIG MOUNTAIN LEGAL OFFICE

before

THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

on

S. 2250,

An amendment to the American Indian Religious Freedom Act of 1978
to ensure that Federal lands are managed in a manner that does
not impair the exercise of traditional American Indian religion

June 1, 1988

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At the Senate Select Committee on Indian Affairs hearing on S. 2250 of May 18, 1988, several distinguished representatives of the Native American, legal, and religious communities testified in support of S. 2250 and, additionally, in favor of broadening the scope of the American Indian Religious Freedom Act of 1978 (AIRFA) and strengthening its enforceability even beyond the language proposed by Senator Cranston in S. 2250. We, too, warmly support the efforts of Senators Cranston, Inouye, and DeConcini, and of the Indian Affairs Committee generally, to protect the right to freedom of religion of Native Americans by providing the AIRFA with some measure of enforceability. And we also concur with the opinions of the witnesses on May 18, 1988 who expressed the need of broadening the scope and enforceability of the AIRFA beyond the language of S. 2250 as originally introduced. Our experience with the actions of a federal agency (the Navajo Hopi Indian Relocation Commission) pursuant to the AIRFA provides what we consider to be a perfect example of the necessity of strengthening the AIRFA, so that federal agencies will be compelled to take their responsibilities under the Act more seriously. Our situation also indicates that a strengthened AIRFA, far from promoting an increase in litigation, will tend to reduce the number of lawsuits--as we have been forced to file suit against the federal government precisely because of the Relocation Commission's failure to fulfill responsibly its trust duty obligations under the AIRFA.

Since the seminal decisions of Chief Justice John Marshall in the 1830s, the federal trust responsibility toward Native Americans has been interpreted as mandating a good faith effort to protect and preserve cultural integrity and religious freedom, as well as political and property rights. Unfortunately, U.S. officials and agencies of the past were frequently unable to see beyond the ethnocentric biases of their socio-historical periods; their ignorance of and insensitivity to Native American ways of life, particularly to Native land-based spirituality, often resulted in their failure to uphold the standards of conduct established by the federal government's fiduciary obligations. Increasingly in recent years, however, Congress has expressed its intent to rectify and redress the historical failures and insensitivities of federal Indian policies, and to insist on the desirability of Indian political and cultural self-determination, rather than externally imposed assimilation. It was in this context of a recognition of past misunderstandings and the consequent need to reevaluate federal-Indian relations that the American Indian Religious Freedom Act of 1978 was enacted.

As the Committee is aware, the AIRFA expressly requires federal officials to evaluate the impact their policies and actions might have upon Native American religious practices and to avoid those actions which do not serve "to protect and preserve for Native Americans their inherent right of freedom to believe, express and exercise the traditonal religions"; federal officials and agencies are "to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices." Thus, the AIRFA must be read as a statement of offical Congressional policy mandating the agencies of the Executive Branch to give presumptive preference to those alternative courses of action which are least injurious to, least incompatible with, and least intrusive upon the practice of Native American religious traditions.

However, it is clear that the actions of the Navajo Hopi Indian Relocation Commission in planning and implementing the relocation program violate the trust responsibility expressed by the AIRFA. For example, the Commission has withheld important anthropological information from Congress--information which could, and should, have had great bearing on the federal government's consideration and implementation of the relocation process.

Pursuant to the AIRFA, the Commission did authorize one, preliminary anthropological assessment of the relocation program: "A Preliminary Assessment of the Significance of Navajo Sacred Places in the Vicinity of Big Mountain, Arizona" by John J. Wood and Walter M. Vanette, Department of Anthropology of the Northern Arizona University, 1979. [A copy of the assessment is appended to this statement]. The anthropologists who performed this assessment based their evaluation almost entirely on data collected from interviews with traditional Navajos that had been conducted by Relocation Commission personnel. Their evaluation of the impacts of the relocation program on traditional Navajo religion suggested that the planned mandatory relocation of traditional Navajo families from their sacred, ancestral homelands would completely destroy the Navajos' ability to maintain their traditional, land-based religion--based as it is upon the regular, often daily, continuance of sacred relationships with specific offering places and other natural altars that have been hallowed by generations of ceremonial practice. More specifically, the anthropologists indicated that the statutory guarantee provided by PL 93-531 (the Navajo Hopi Land Settlement Act of 1974) of access to and use of sacred sites--however well-intentioned it may have been--was inadequate to ensure the full protection of the right to the free exercise of religion of the traditional Navajos. As the "Preliminary Assessment" itself states: "the right of access to and use of sacred places without occupancy does not make sense" (page 24) . . . . "it appears that the legal provision for access alone may result in infringement of rights, if the suggested interdependency of sacred places and occupancy is borne out" (page 28).

In addition to having questioned the constitutionality of relocating traditional Navajos from their sacred, ancestral homelands, the "Preliminary Assessment" repeatedly expressed the need for the federal government to authorize a more detailed and comprehensive study of the Hopi Partitioned Lands (pages 1 and 28). Despite its having received the "Preliminary Assessment" (which had been based upon its own data), the Relocation Commission failed to inform Congress in any meaningful way concerning the adverse impacts of the relocation program on traditional Navajo religion and culture. The Commission did not forward the "Preliminary Assessment" to Congress, nor did it authorize a detailed, comprehensive study--or any additional study--of the impacts of relocation on Navajo religion. Nor did the Commission raise the issue of the constitutionality of PL 93-531.

Largely because of the failure of the Relocation Commission to act responsibly in fulfillment of its trust duties as expressed by the AIRFA (and other relevant statutes and court decisions), lawyers from the Big Mountain Legal Office and from other legal organizations across the country have recently filed a First Amendment (Religious Freedom) class-action suit on behalf of the approximately 1500 traditional Navajo religious practitioners who remain on their sacred, ancestral homelands (the Hopi Partitioned Lands). One of the witnesses at the May 18, 1988 hearing, Scott M. Matheson, a representative of several mining and timber interests, presented this lawsuit (Manybeads v. United States, Civ. No. 410 PCT-EHC) both as an example of the "absolute and all-encompassing nature of Indian religious claims to the public lands" (page 8 of Mr. Matheson's statement) and as an indication that strengthening the AIRFA by enactment of S. 2250 will have the unfortunate and divisive result of spawning litigation rather than promoting mutual accommodation in the use of federal lands. Mr. Matheson's summary of this lawsuit contains a number of factual errors and, more importantly, reveals a serious misconception about the nature of Native American religion and the need to provide for Native Americans the full protection of the right to freedom of religion which is guaranteed to all Americans by the First Amendment.

As our statement has indicated above, it is the AIRFA's very lack of enforceability which has largely necessitated the filing of the First Amendment lawsuit on behalf of the traditional Navajos. If in 1978-79 the Relocation Commission had been obligated to comply with a serious mandate to understand and then preserve and protect traditional Native American religions, it never could have completely ignored not only the anthropological study it commissioned but the entire issue of the expected impacts of relocation on traditional Navajo religion and its duty to inform Congress of these impacts. So the First Amendment lawsuit indicates not that a strengthened AIRFA will spawn litigation, but rather that such an Act will force federal agencies to act more responsibly and sensitively. Thus, a strengthened AIRFA should result in fewer lawsuits needed to protect Native American religions.

Moreover, the First Amendment lawsuit does not involve the use and management of public lands but rather of reservation lands (the lands in question were established as a reservation by Executive Order in 1882). More importantly, the case is not, as Mr. Matheson implies, a conflict between two tribal governments (the Navajo and Hopi) over control of property, but is a class-action suit (with 47 representative plaintiffs) designed to defend the individual, constitutional rights of the traditional Navajo residents of the Hopi Partitioned Lands against the violation of their rights by the federally mandated and implemented relocation program. In fact, the Manybeads v. United States lawsuit marks the first time that the federal government will be forced to address the Navajo-Hopi issue in the context of the individual, constitutional right to freedom of religion. Furthermore, Mr. Matheson has apparently confused the First Amendment case with previous court proceedings conducted not by the individuals and families of the Hopi Partitioned Lands but by the Navajo Tribal Government: "The Navajos identify 81 religious sites in the area, although as recently as 1975 they had claimed only that two religious sites were in the area. On the basis of these religious sites, the Navajos assert that their rights under the American Indian Religious Freedom Act and the First Amendment would be violated if they were not permitted to remain in control of the area" (pages 10-11). The sites to which Mr. Matheson refers were first listed and described by the Navajo Tribe in litigation against the Hopi Tribe initiated in 1958 and later in pre-partition and post-partition proceedings related to the enactment of PL 93-531 in 1974. These sites are all tribal, rather than individual and familial, in nature. The Navajo Tribe maintains that these sites are religious shrines for which the guarantee of right of access and use for all members of the Navajo Tribe must be preserved according to Section 21 (25 USC 640d-20) of PL 93-531 as enacted in 1974.

However, the First Amendment lawsuit brought on behalf of the 1500 traditional Navajo individuals remaining on the Hopi Partitioned Lands charges that the constitutional right to religious freedom of these individuals is being violated by the federal government not because these individuals will be denied access to and use of particular religious sites but because they will be denied occupancy of their sacred, ancestral homelands and, thus, will be deprived of the very basis of their religion (as indicated in the anthropological "Preliminary Assessment" quoted above). Finally, Mr. Matheson's confusion concerning the First Amendment lawsuit reflects a serious misconception of the nature of traditonal Native American religions which, unfortunately, is common among representatives of federal agencies and private industries that are involved in resource development and management. This misconception is so widespread that the AIRFA must be given at least some measure of enforceability if Native American religious freedom is to be protected in any meaningful way by the federal government: federal agencies, and private industries alike, need to realize that protecting Native Americans' right to religious freedom is not so much a matter of identifying and preserving 2 or 81 or even a 1000 separate, particular sites so much as it is a matter of recognizing that a traditional homeland and/or ceremonial area constitutes a sacred cosmos which must be preserved and protected in its pristine entirety if it is to be preserved and protected at all. As Kee Shay, a traditional Dineh (Navajo) of the Big Mountain community, states: "The land is my relative, we are one, we are all connected and interrelated. The Creator placed the Dineh between the sacred mountains. But we are not alone, we live among and are related to all creations. The earth is our mother, the sky is our father. We are related to every living thing, and even the clouds, the buttes, springs, rocks--they all have spirits and they are also our relatives." [Paragraph eleven of Kee Shay's affidavit appended to this statement].

The following affidavits and anthropological studies are appended to this statement of the Big Mountain Legal Office: affidavits of Mae Wilson Tso, Jack Hatathlie, Violet Ashkie, Mark Charley, Alice Benally, Kee Shay, and Dr. John J. Wood, "A Preliminary Assessment of the Significance of Navajo Sacred Places in the Vicinity of Big Mountain, Arizona," and "Land and Religion at Big Mountain: The Effects of the Navajo-Hopi Land Dispute on Navajo Well-being." These statements of religious belief and practice by traditional Navajos of the Hopi Partitioned Lands and of anthropological assessments by Dr. John J. Wood are being offered as evidence in the First Amendment (Religious Freedom) lawsuit. We believe that they can contribute to an understanding of the pressing need to provide the AIRFA with enforceability and, more generally, of the need to make Congress and the American public more aware of the severe problems traditonal Native Americans face in their efforts to preserve their religions and cultures.

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A PRELIMINARY ASSESSMENT OF THE SIGNIFICANCE OF NAVAJO SACRED PLACES IN THE VICINITY OF BIG MOUNTAIN, ARIZONA

15
JAN 1979
RECEIVED
NAVAJO-HOPI
RELOCATION
COMMISSION

prepared for

The Navajo and Hopi Indian Relocation Commission

under contract

by

John J. Wood

and

Walter M. Vannette

Department of Anthropology
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January 15, 1979

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Appendix 1

Appendix 2

INTRODUCTION

The following report was prepared under contract between the authors and the Navajo and Hopi Indian Relocation Commission, United States Department of the Interior.

In compliance with the terms of the contract the following pages will present the results of a preliminary inquiry into the possibility of there being substantial religious significance associated with the shrines, land, and medical practices found in an area of the former Joint Use Area known as Big Mountain. It includes, further, a determination of the need for a more detailed comprehensive study to fully ascertain religious significance.

BACKGROUND

The study area of Big Mountain is located in the vicinity of the geographic feature named Big Mountain and Moenkopi Wash, in the northern part of Hardrock Chapter. Hardrock Chapter is one of 13 chapters that transect the former Joint Use Area, and one of 101 such political units functioning in the Navajo Tribal Government.

With the enactment of the Navajo-Hopi Land Settlement Act (Public Law 93-531) some residents of Big Mountain have assumed a position of resistance. This resistance is grounded on a perceived infringement of the people's rights and interests as they pertain to the Big Mountain area. A number of processes associated with Public Law 93-531 seem to account for this perceived infringement.

First, the Mediator's settlement and partition of the lands within the reservation established by the Executive Order of 1882 positions the

Big Mountain area on the Hopi side of the boundary line. A brief review of the history of negotiations surrounding the partioning of land in the area suggests that in every determination the Mediator accepted the recommendations of the Navajo Tribe.

There are numerous Navajo sacred places distributed throughout the Big Mountain area. The concern of residents is that these sacred religious places have not been given full recognition by government officials, either Navajo or Federal. The map of Navajo sacred places presented for exhibit in the case of Healing vs. Jones identifies only two sacred places in the 1882 Executive Order Area. Subsequent court submissions by the Navajo Tribe have increasingly recognized these places. However, as late as 1975, during the negotiations involving the partition line, the maps that were presented did not include herb gathering areas. The last site identifications submitted before the District Court on May 13, 1977, are far more comprehensive, yet some sites still remain unidentified.

Federal recognition, legislative treatment, enforcement procedures, and administrative policy directives also have been limited with respect to sacred places. This limitation may be a result of failing to perceive what constitutes Navajo reality of sacredness of place. Although variation does exist, it would seem that there is a symbiotic relation between belief, place, participation through use, and occupancy. To segment this interdependent relationship by allowing only for access to a sacred location is to subtract occupancy, and, perhaps, a degree of participation through use. A clear example of this segmenting process exists in the case of Healing vs. Jones. Here visitation to special religious places was recognized, but the court found that this in no way constituted occupancy nor did it establish exclusive interest in these places. This position seems to sever the links between the parts which consitute the symbolic sacredness of place and, therefore, the right to preserve the integrity of such places. However well intended, it appears that this position is an implicit infringement upon the exercise of free religious belief and meaningful spiritual observance. Big Mountain residents have been resistant in part because they perceive these conditions and positions as being restrictive and precluding their basic human rights as set forth by law.

Second, with the passage of Public Law 93-531 the Secretary of the Interior was authorized and directed to reduce the number of livestock within the former Joint Use Area to the carrying capacity of the land. The implications of the livestock reduction program for the social, economic, and psychological life of the people from this area have been documented (Wood, Vannette, and Andrews 1978). For the person of Euro-American descent, it may be possible to conceptually segment (for purposes of research or policy management) the issue of livestock reduction from say, the issue of relocation, but such is not the case for many residents of the change area; the encounter with Bureau of Indian Affairs personnel over fencing at Big Mountain is a case in point. This resistant encounter and the reasons given for it are perceived as interrelated with and inseparable from the more generalized position of resistance to the concept of relocation.

Expressions of resistance to relocation have assumed a number of forms. One form has been the physical overt resistance associated with the isolated and somewhat spontaneous fencing incident. Related to this have been the occasional threats directed at government workers and reports by relocation personnel that in some instances they have been "chased-off". Another form of resistance has evolved with the formation of an organized representational group -- the Keep Big Mountain Area Planning Committee -- as a tool for expressing their grievances and concerns.

Both as individuals and in some instances through committee, members of the community have stated their position and perspective on the issues through verbal address and discussion. This approach is evidenced in the numerous meetings and informal gatherings with officials from the Washington headquarters of the Bureau of Indian Affairs, with several United States Senators, Navajo Tribal Officials, local United States Government personnel, and with the Press.

Finally, some residents of the area have sought to express their beliefs and intentions through organized peaceful demonstration. Two marches of particular note are The Longest Walk to Washington, and The Big Mountain Walk for Sovereignty to Flagstaff.

At one point Chairman Peter MacDonald identified the Big Mountain situation as explosive (Navajo Times, June 1, 1978) and at approximately the same time relocation personnel publically implied that people from this area were uncooperative (ibid). These impressions, formulated by external observers, and the apparent diversity of strategies that members of the Big Mountain community have employed to convey their concerns have raised an important question: Is there particular particular importance associated with land use, medical practices, and shrines found in the Big Mountain area?

In an attempt to answer this question, the Navajo and Hopi Indian Relocation Commission on December 21, 1978, contracted with Northern

Arizona University to conduct a preliminary anthropological investigation. Given the preliminary nature of the inquiry, the quality of existing data, the constraints of time, field conditions (e.g. the necessity of having to be housed at some distance from the study community), and, most importantly, a lack of rapport, it was not possible to conduct this investigation within the context of a systematic research design. The conclusions arrived at herein are for these reasons based upon existing data that previously had been collected by personnel of the Flagstaff Relocation Office, and our own brief opportunity for field observation.

METHODOLOGY

The initial intent was to approach what appeared to be a number of different groups in the study community. Based upon a previous study of the former Joint Use Area (Wood, Vannette, and Andrews 1978), some information on the composition and organization of these groups was already available. The snowballing, non-random, technique of data collection was to be employed. With the awareness that increasingly time was placing a constraint on our field activities, this approach was modified. Modification took the form of trying to contact key informants who had important religious and healing roles within each of the previously defined social groups. Prior to entering the field, we were informed that good rapport in the community had been established through the Relocation Office's field personnel. This by anthropological standards was not the case. For this reason we were not able to proceed as efficiently as was first anticipated.

An open-ended interview schedule was used to interview three respondents. Additional statements were received from ten individuals interviewed by relocation personnel. A detailed accounting of the individuals interviewed by sex and birthdate along with the interview occasion or information source appears in Appendixes 1 and 2.

THE QUESTION OF SIGNIFICANCE

The significance of place in the reconstruction of Navajo religious philosophy to be presented below lies in relationships to the whole, and ordered, all-inclusive unity. From the perspective of people in an area such as Big Mountain, the significance of place is more direct. People have ties to place in terms of ancestral use-rights, familiarity, and the specific locations of places where prayers and offerings are made for their well-being.

Euro-American views of significance are more segmental and analytical, at least as they are represented in the legislative arena. There are relatively few successful cases involving the question of the religious significance of Native American lands. The recent case of Taos Pueblo's claim to Blue Lake is perhaps the most comprehensive and revealing in terms of testimony.[1] We mention this case here because questions raised in the testimony are clues to admissible indicators of the significance of sacred places. Our interpretation of these questions and testimony may be summarized in the following unordered list of indicators. An unqualified indication of significance is signified by a "yes" or "no" answer to the question.

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[1] Hearings Before the Subcommittee of the Committee on Interior and Insular Affairs, U. S. Senate, 91 Cong., 2nd Session, July 9 and 10, 1970.

- Is there a symbiotic relationship among land, religion, and people that represents an important attachment to the land, and are there sacred places in use today that symbolize this relationship? Yes.
- Does the place play an important role in the origin myth of the people? Yes.
- Can shrines or places of offering be moved or relocated? No.
- Has the area been used for a long time, continuously, and frequently? Yes.
- Do people today feel as they have in the past toward the sacred areas? Yes.
- Does the area symbolize unity and continuity of the people? Yes.
- Do ceremonies and rituals "bind" people to the specific locations? Yes.
- Can the ceremonies and rituals be carried out elsewhere? No.

This list of indicators will serve as a point of reference in subsequent discussion following a brief review of the concept of place in Navajo religion and the data on sacred places in the Big Mountain vicinity.

NAVAJO RELIGION AND THE CONCEPT OF PLACE

Navajo religous acts and attitudes are not as compartmentalized as are the religious acts and attitudes of many Euro-Americans. In Reichard's words: "...it is religion which integrates all phases of Navajo culture..." (1944:2). But Navajo religion is not monolithic and immutable. There is variation in religious knowledge and belief, and the full impacts of Christianity and the Native American Church remain to be seen.

The following are only some of the principal themes in Navajo religion; themes that are abstracted mostly from summaries by Leland C. Wyman and Gladys A. Reichard to provide a context for discussion of the Big Mountain area.

According to Wyman: "The core of Navajo religious philosophy is the belief that the universe is an orderly, all-inclusive, unity of interrelated elements in which the principal of reciprocity governs man's relations with these elements, which include other men" (1975:4). This order and the rules by which man lives were established by the gods and Holy People.

> Improper contact with inherently dangerous powers -- even though it be indirect, unintentional or unconscious -- or the breaching of traditional restrictions (taboos) may lead to illness, the price man pays for disturbance of the normal order, harmony, or balance among elements in the universe (Wyman 1975:5).

Restoring and maintaining harmony (blessing), exorcising evil, and protection from danger are accomplished in ceremonies that are mostly curative (except Blessingway), occasional, and personal. and through prayers and offerings. These rites, ceremonies, and prayers and offerings were also established by the gods and Holy People.

There are no priesthoods or religious societies. Expert knowledge of the ceremonies -- their mythological charters as well as their performances -- is held by persons known as chanters or singers. Individual chanters may have expert knowledge of from one to five or six ceremonies of an active number of somewhere around twenty. Frisbie and McAllester (1978:1) estimate that there are only three or four hundred chanters on the entire reservation today. There are also persons who have the ability to diagnose and divine through hand-trembling and crystal-gazing, and some persons have detailed knowledge of the use of plants for healing and in ceremonies. Chanters, too, may have this knowledge. Additionally, "...almost every adult man and numerous older women know and perform shorter rituals taken from a repertory of prayerstick cuttings, jewel and pollen offerings and 'short sings' ..." (Frisbie and McAllester 1978:1).

Supernatural power is immanent in nature. "Animals, plants, mountains, and many natural phenomena are endowed with power. *Even the seemingly most insignificant of these are indispensable*; *all are interdependent, being complementary parts of the whole*. Animals and plants are conceived as capable of assuming human form at will, mountains have anthropomorphic inner forms, ..." (Wyman 1975:8-9, emphasis ours). Partly because of the immanence of supernatural power, the pantheon of gods and Holy People is vast and complicated. "Factors that (further) complicate the picture are the equivalence of beings appearing under different names or as various actors in the myths, the multiplication of dieties in time and space, (and) duplication of functions among the different dieties..." (Wyman 1975:8, parentheses ours).

"Place symbolism", as Reichard (1944:26) calls it, is central in Navajo religion. The mythical charters of most chants or sings have lists of place names visited by the heros of the myth. And, origin myths are full of references to place. This geography is largely mythical and symbolic, but it is usually tied to physical place. The geography of the present world, for example, was duplicated in the previous underworlds, and mythological explanations account for the origin of geographic features as well as the rules which govern man and the universe. Names for places in myths are relatively consistent, but sometimes there is lack of agreement concerning their physical locations. In addition to the symbolic nature of place, this variation may be the result of chanters' and others' identification with their own localities (Reichard 1944:26), as well as a reluctance to specify exact locations for fear of losing power (Fishler 1953:92).

Finally, there is uncertainty about foreign territory; it is unfamiliar and "uncontrolled". When setting out on a journey or while traveling, prayers and offerings are more frequent (Reichard 1944:16). Reichard has proposed that certain symbolism in Navajo ceremony represents a protective line or danger line behind or within which one is protected by ritual. She further suggests that a "...belief in the danger line explains the more urgent need for prayer when a man travels since he may inadvertently cross it and he knows not what dangers lie beyond" (1944:17).

SACRED PLACES IN THE BIG MOUNTAIN AREA

THE NATURE OF SACRED PLACES

The question of significance has been addressed, but the definition of "sacred place" has been delayed until now because in our view a basic understanding of the role of place in Navajo religion provides the necessary context. We have seen that the belief in immanent supernatural power in nature and the geographization of that power are pervasive sentiments in Navajo religious philosophy. In the spirit of this view, Editha Watson has defined a Navajo "Sacred Place" as:

> 1) a location mentioned in legend: 2) a place where something supernatural has happened: 3) a site from which plants, herbs, minerals and waters possessing healing powers may be taken: and 4) where man communicates with the supernatural world by means of prayers and offerings" (1964:22).

These kinds of locations are not mutually exclusive. A place where something supernatural happened is often mentioned in legend; plants, waters and minerals collected there may have healing powers; and prayers and offerings may be made at the same legendary place for many purposes. On the other hand, different places, and the same places at different times may require different religious acts and provide different benefits.

Typical places for prayer and offering are prominent or unusual geographic features, springs, and places where medicinal and ceremonial plants grow.

The use of sacred places is not limited to chanters and other specialists, although only they may have the knowledge to use certain sites in the correct manner. Knowledge is the limiting factor. If a person knows the prayers and offerings appropriate to a place and action, he may make them. Many adults have this knowledge and make use of it as it is needed.

Offerings usually include corn or other kinds of pollen, or jewels (chips of white shell, turquoise, abalone, and jet), or prayersticks, or perhaps some combination of these. Prayers appear to be passed from generation to generation, in form if not in content; but, there is very little available information concerning prayers except in ceremonies.

Plants and herbs have a special place in Navajo culture as medicines of a supernatural sort and in an apparently vast practical pharmacopoeia. Certain plants or herbs must be collected from special places at certain times, and prepared in a special way. Plants, like other natural phenomena, are said to have an "inner form" (Haile 1943), and the collector of a plant for medicinal purposes must make a covenant with the plant through prayer and offering (see, for example: Wyman and Harris 1951:14; Luckert 1975:54-58; and Luckert 1978:73-80, 174-175).

THE STUDY AREA

The study area defined for us by the Navajo and Hopi Indian Relocation Commission (NHIRC) includes parts of six U. S. Geological Survey 7.5 minute quadrangles (55SW, 54SE, 55SW, 77SW, 77NE, 78NW in the notation used in the 1882 Executive Order Reservation) lying within the Hopi portion of the former Joint Use Area, in the northern part of Hard Rock Chapter. More specifically, the area lies between (and includes) Big Mountain and Moenkopi Wash in these quadrangles.

A list of Navajo sacred or religious areas on the Hopi portion of the former Joint Use Area shows a total of eighty localities of which nineteen (23.8%) are in the quadrangles which include the study area (excluding Black Mesa).[1]

The maps provided by the NHIRC show fifteen localities from this list, nine that are not on the list, and two archeological sites. Other information sources gathered by the NHIRC from people in the Big Mountain area indicate that there may be even more localities of potential significance.

The data we have for most of these locales are spotty, not comparable, or non-existent. The most complete information, relatively speaking, is for Big Mountain itself. The intent of the following sections is to review the data before turning our attention to a tentative evaluation.

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[1] The list is the Navajo Tribe's submission (May 13, 1977) regarding identified religious shrines in the case of Sekaquaptewa vs. MacDonald, in the United States District Court for the State of Arizona. No. Civ. 579 PCT (JAW).

BLACK MESA

Big Mountain is the most prominent feature in the heart of Black Mesa, and Black Mesa in its entirety is sacred, "...equally sacred as the four sacred mountains of the Navajo people".[1] Both Black Mesa and the Lukachukais are said to have the forms of persons (Klah 1942: 64-65; Watson 1964:9; Luckert 1978:48; (25)).[2] Black Mesa (Black Mountain) is female (7), and the Lukachukais are male (25); Watson 1964:9; Luckert 1978:46). One of the persons interviewed identified different geographical features as parts of her body (5). The roles of these two persons in Navajo mythology is not indicated in our data, but Watson says that the Sky Supporters stand on the summits of these figures (1964:9).

Black Mesa and the 1882 Executive Order Reservation contain many places considered sacred by the Navajos and Hopi, judging from the lists and brief descriptions provided to the courts by both tribes; however, it is not possible to assess these in relation to Big Mountain without further information.

BIG MOUNTAIN

On Big Mountain there is a circular stone foundation about twenty feet in diameter with a cubical structure of stone in the center and an opening or "doorway" to the east. The structure represents a hogan with the center as the focal point. The structure is said to be very sacred to the people of Big Mountain and surrounding area -- the center, which is the shrine, is said to be the holiest place on Big Mountain. When offerings are made, people enter from the east and go clockwise (sunwise) to the center to place offerings in the cubical structure. The hogan is the home of Be'gochidí and Begołtsooí, the Holy People who had livestock (6).[1] The place is also the home of livestock (5).[2]

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[1] Notes for site 61 (Black Mesa) in the list of Navajo sacred places on the Hopi side of the partition line referenced previously.

[2] Numbers in parentheses are citations keyed to the list of interview occasions or information sources for this project reproduced in Appendix 2.

In a statement for the Big Mountain Committee, Big Mountain is referenced as the home of "Bee'oochidí (God of Species)" (1). In another interview it was stated that Big Mountain is in the shape of a man whose name is Begochidi Hastiin — "He is the one that created man" (26). The shrine was built by the Holy People (23,24), and the story of it goes back to the Emergence (24). Begochidi is also associated with the moon, but the association was not clear from the interview (23).

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[1] The entire paragraph is paraphrased from occasion (6). The names were transcribed by the staff of the NHIRC as Begochi(e)dii and Begotsoii respectively. In our interviews, when the former was mentioned, it sounded like Be'gochidí in the Young/Morgan orthography. Begochidí is the transcription in Haile (1978:141). Henceforth, we shall use Begochidi for the sake of convenience. The second name is written here as Begołtsooí since, from the context and the transcription, it appears that the Bego-who-is-yellow is intended (see Haile 1978:141).

[2] It is not clear from the transcript whether the home of livestock is the general area or whether the reference is to a hole (dug-out) mentioned in (5) as being in the cubical structure.

Thus the people of Big Mountain consistently identify Big Mountain as the abode of a Holy Person, Begochidi, who is mentioned as the creator of man; the keeper of livestock; the god of species; and who is associated with the moon. There is a sacred shrine on Big Mountain representing the home of this Holy Person, and livestock. Legends and myths were not obtained, possibly because the people who were interviewed did not know them (this kind of knowledge is usually known in detail by chanters), or possibly because they did not want to tell them. However, Begochidi is mentioned frequently in the literature of Navajo religion, and perhaps some indication of the roles of Begochidi can be assessed through a brief review of some of the citations.

Begochidi is an enigmatic figure in Navajo mythology. Not the least of the enigmas is the frequent reference to Begochidi in association with other "Begos". The shrine on Big Mountain is described as the home of Begochidi and the Bego-who-is-yellow. This association is rather common. In many myths, however, there are four Begos -- Begochidi, Bego-who-is-white, Bego-who-is-Black, and Bego-who-is-yellow. In Frank Goldtooth's version of the Creation myth, Begochidi is identified with "Bego Yellow" and another Bego, Bego Blue, is added to the list to make four (Fishler 1953:11). A clue to the frequent association of Begos is found in Slim Curly's version of the Mothway myth: "By a change of colors, the (same) haze moved about with him (Begochídi), they say. The same person they called 'Bego-who-touches', 'Bego-who-is-white', 'Bego-who-is-black', 'Bego-who-is-yellow', they say" (Haile 1978:83-84, second parentheses ours). Thus, Begochidi apparently traveled in hazes of different colors. The essential identity of the four Begos is mentioned also in Wheelwright (1949:57).

Begochidi is described in vague terms, like "the blue-eyed, yellow-haired god" (Klah 1942), or simply as very old (Matthews 1897:226). Matthews says that Begochidi is not represented by masked impersonators, or by pictures in dry-paintings (p.226). Included among the varying identities of Begochidi are: the god of the Mexicans, or Americans; the moon carrier; the creator; a divine hermaphrodite; the custodian/creator of domestic animals, or game, or both; and many others (see Luckert 1975:176-177).

In Hosteen Klah's much-cited Creation myth (1942), recorded by Wheelwright in the 1930's near Newcomb, New Mexico, Begochidi was the primary moving spirit behind all creation, although he acted in consultation with other Holy People. And, after everything is created in the myth, "Begochiddy goes up into heaven where he remains" (p.16).

Closer to Big Mountain and more recently, Fishler (1953) has recorded a Creation myth told by Frank Goldtooth near Tuba City, Arizona, in which Begochidi plays an important, though somewhat more restricted role in the events before emergence into this world. The creator is "Supreme Sacred Wind", and the parents of the four Begos, including Begochidi (Bego Yellow), were Ray of Sun and Daylight.[1] Begochidi created the mountains. The first was Black Mountain which was laid out with the moon.[2] Then he created insects. The four Begos made beans, and created birds and game. Begochidi created and planted cotton.

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[1] The identification of Begochidi as the son of the sun is found in other legends (e.g. Wyman 1970:244; Wheelwright 1949)

[2] The location of this mountain is unclear.

The other gods made domestic animals, but Bego Black had to show them how to make them come to life. People were created by Supreme Sacred Wind. Begochidi is further responsible for the "Basic Law" of increase in animals. After the Emergence, Begochidi wanted to plant some of the things he had created and planted before, but the gods would not let him. There is no indication of what happened to Begochidi. Goldtooth would not reveal the names and locations of the gods since he believed he would lose power as a chanter (Fishler 1953:92).

Begochidi in the Mothway myth of Slim Curly (Haile 1978) assumes yet another apparent identity. Here Begochidi was given to touching the crotches of the Butterfly People, and to disturbing hunters and persons enganged in sexual intercourse in the same way. The Mothway myth itself is a rationalization of the relationships between brothers and sisters.

Begochidi appears also in several versions of Blessingway, which is commonly regarded as the backbone of Navajo ceremony (Wyman 1970). He appears as a custodian of horses and the sponsor of domestic animals. In Slim Curly's version, sheep and goats were created by Changing Woman. She gave the following instructions concerning how to live with sheep and goats:

> 'You must plead for them with Begochidi whom the sun never leaves, who time and again transforms into sunlight, into wind, who is found absolutely everywhere', she said to them. (Wyman 1970:246).

River Junction Curly said that: "The four Begochidis put down that which would be the wanderers. They made images of people. They all wore hats. He also made cattle, also burros" (1970:676). The places associated with the Begochidis, such as "Wide Horizontal Belt", "Dwarf Wide Horizontal Belt", and "White-clay-comes-down", are not further identified.

Finally, Luckert (1975:176-177) thinks that Begochidi is one of three major Navajo hunter gods, because of Begochidi's role as a tutelary creator in several of the huntingways, and that the roles and identities of Begochidi have changed historically.

The many identities of Begochidi are bewildering, but not surprising given the nature of Navajo religion. However, there appears to be a common theme in these myths and legends: that Begochidi is a generative principle (and principal), especially in relationship to animals.

The only citation that could be found in the literature concerning the nature of communication between man and Begochidi is Changing Woman's statement quoted previously: "You must plead for them (sheep and goats) with Begochidi..."(parentheses ours).

The shrine at Big Mountain is used on special occasions (23,25). Prayers and offerings are made for well-being (23,24), livestock (5,7, 23,25), crops (7), people who are away (7), spiritual guidance and thanksgiving (24,25), and requests for something (24). It is used in spring when the plants start to grow (23,24,25) and in the fall when plants (corn) are ripe (after harvest)(24,25). The shrine is used at the suggestion of a chanter, because of dreams (23,25), or because one wishes to make an offering there (25,26). If a person knows the prayers he does not have to use a chanter (24,25,26), but one may request a chanter to do the prayers (25).

Two persons mentioned that they had had a ceremony at the shrine in their childhood (7,23), and one person said that he had used the shrine several times in his lifetime (9). The most recent use was five days prior to the interview (24). When asked about the frequency of use, B said that once in a lifetime might be enough if one follows the spiritual way, but one might go as often as once a year (25). The shrine is also used by persons from outside of the area (Tuba City and Kayenta, for example)(5,23,24).

All of the points made about Begochidi by persons in the study sample can be duplicated in the cited myths and legends. The localization of Begochidi in Big Mountain and mention of the shrine, however, cannot be found in the extant literature. The silence of the literature on this point is not at all surprising. People are reluctant to name and locate sacred places.

Big Mountain is also an important place for collecting medicinal herbs and plants used in ceremonies. In the Navajo list of sites submitted to the court, in reference to the entire length of Big Mountain it is stated that: "Every Navajo ceremony requires herbs from this location. Big Mountain is the major source of medicine" (emphases theirs). Medicines at Big Mountain are emphasized in several interviews with and statements by residents of the area (1,8,23,24).

On one occasion (8) a large number of plants were identified and their uses explained. It was also explained in this interview that herbs are collected in certain places at certain times. Many uses for plants of the area were given by K (a diagnostician and herbalist (24) . She said that she collects herbs for chanters from the area when requested; that plants must be collected with set procedures;

and the area is the only spot where certain herbs grow. In addition, reference was made to use of plants from Big Mountain by persons from other places (23,24).

There is no indication in our data or in the literature that the special nature of Big Mountain as a place for collecting medicines is due to the presence of Begochidi; however, such a relationship is a distinct possibility.

There are two other explicit references to "sacred places" on Big Mountain in the Navajo submission of sacred places, and a third reference that can be identified as being at Big Mountain with the help of a statement prepared by the Big Mountain Committee (1). Of the two explicit references, the first is a location for prayers and offerings for children, livestock, and other blessings; the second is for prayers for rain and to stop strong wind. The third site is used for offering during Beautyway and for prayers for rain and blessing.

OTHER PLACES OF POTENTIAL SIGNIFICANCE

Fifteen sacred places or religious areas not mentioned previously are located within the study area according to the Navajo Tribe. Most of these are found west of Big Mountain, toward Moenkopi Wash, and most are springs. Prayers and offerings for rain, blessing and well-being are common uses of the sites; but, use ranges from prayers and offerings for a safe journey to collecting medicinal herbs and trapping eagles for feathers. Four sites are used in connection with Beautyway. Medicine men (chanters) or medicine men and their patients are cited most frequently as the persons who use the places.

Several additional places are mentioned in the same general area in the interviews and statements collected by the NHIRC. And, their uses are similar.

About a dozen more localities, again, mostly springs, are cited as sacred places by persons living in the northern part of the study area (15,16,17,20,21). With the exception of three sites, there is no specific information about these places. The three sites are at springs. One has three or four pictographs said to represent yé'ii (Holy People) (17). The person interviewed did not want to name the pictograph panel, "because I have respect for it". However, she said that there was a dance (in the past) and the yé'ii went into the rock. One of the remaining spring sites has a place for offerings and prayers for bad dreams and bad luck. The other site is said to be used by medicine men to wash their patients.

The interpretation of these places and how they fit into the larger picture, if indeed they do, is seriously hampered by a lack of data. This lack of information is lamentable, since we suspect that the holistic perspective mentioned as important for our understanding of the Navajo view of significance may lie in how these places, Big Mountain, land use, and occupancy mesh, particularly at the local level.

OCCUPANCY IN RELATION TO SACRED PLACES

The intent of Public Law 93-531 in guaranteeing access to and use of sacred places is clear. The question of the right of occupancy would seem to be beside the point now. And, according to court findings in the case of Healing vs. Jones, the presence of sacred places in an area does not establish the right of occupancy. Yet, we would argue that to understand the point of view of the residents of the Big Mountain area, and perhaps other Navajos on the Hopi side of the partition, the question must be re-opened.

There are no definitive answers to the question in the meager information collected from the residents of the Big Mountain area thus far, but there are some scattered references concerning the relationship of occupancy to sacred places that are suggestive.

The majority of the sacred places elicited in the study area are water sources, usually springs. Also, water and rain are frequently mentioned in the comments of people interviewed at these and other sites, and in people's prepared statements. Water for human consumption, livestock and crops is a critical resource subject to fluctuation in this area, as it is elsewhere in the Southwest. We do not have any figures for this population, but for the former Joint Use Area as a whole in 1977, livestock income alone accounted for over one-quarter of the total aggregate income of a probability sample of 146 households (Wood, Vannette, and Andrews 1978). A significant part of this income was from livestock sales in the reduction program associated with Public Law 93-531, but there is some evidence that prior to reduction there was a comparable income figure for livestock, with home consumption accounting for a large share. Few economic questions were asked of the people in the study area, but it is our impression that subsistence is still, or was before the current stock reduction, a major factor in the local economy, especially for persons over 30 or 40 years old. Thus, the relationship of water to land use is, we think, still important.

There is some suggestion that social organization is a crucial part of this relationship in the Big Mountain area. About one-half of the persons interviewed comprise a set of close relatives, in a biological sense as well as the social sense of being members of the same clan. These people apparently have ancestral claims to the use of the land at the southern end and the eastern margin of Big Mountain, and the lands on the flats west toward Moenkopi Wash. Several members of what seems to be a similar kin-territorial unit who occupy lands to the north were also interviewed. There were a few others interviewed whose relationships to these people were not ascertained. The lists of sacred places elicited are remarkably consistent within but quite different between these two "groups", with the exception of Big Mountain itself, which is consistently identified as important.

Prevalent themes in the interviews that concern land use are: the Navajos have been in the area since the Emergence; the land and waters were used by their grandparents and parents who taught them their use; and their grandparents and parents are buried in the area. For these reasons, and others, they do not want to leave. The ancestors of members of these two groups (and probably others) established the present use-rights to grazing area, farm plots (?), and water sources, as well as the pattern of land use. The differences in the lists of water sources, then, are explicable in terms of the history of use-rights. These links among water, land, and social organization are well-known to students of Navajo culture; however, the mesh of the use of the land with sacred places has not been addressed to our knowledge. Our inferences about the nature of the relationships here should be understood as only tentative speculations.

The relationship among occupancy, land use, and sacred places at the local level may be seen in several ways. First, ritual at sacred places may define traditional land use boundaries for the kin-territorial units we have postulated for the Big Mountain area. The boundaries appear to have meaning for use-rights as well as for "protection"; protection in terms of Reichard's idea of a protective line established by ritual beyond which the unknown and potentially dangerous may lie.[1] Seen in this way, one's ancestors could be thought of as having "secured" the land through the proper prayers and offerings. To leave the land might be potentially dangerous, and it might be a violation of the stewardship and reciprocity with the Holy People.

Some support for these inferences is found in the following: There are stories about two springs in the Big Mountain area (2,3) that refer to a dangerous water god or monster who used to live in the area. He was forced underground (by the Holy People?), and he must be approached with offerings of corn pollen and jewels and prayers to insure a supply of water. The concern for safety in travelling outside of the area is expressed in the fact that prayers and offerings for persons about to start out on a trip are made at several sites. And, there are statements such as: "We still believe that the 'Holy People' are still around this area and that is why we don't want to give up this land (7)"; We live here in three (3) groups of familys, and we control our land and our livestock. Because everything we have, we pray for it; that's what our grandfather use to do, that. And they told us never forget. Keep it up"(20, some punctuation supplied).

It appears that sacred places are part of the definition of occupancy, for the Big Mountain area at least; hence, the right of access to and use of sacred places without occupancy does not make sense. We suspect that this would apply also to places like Big Mountain itself and perhaps to other sites that are extensively used by persons outside of the area.

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[1] While we think these boundaries are real, we do not want to imply that they are rigid.

EVALUATION OF SIGNIFICANCE

On the basis of the data that we have examined and reported herein, we think that it is likely that there is substantial significance to be found in the relationship among sacred places, land use, and occupancy in the Big Mountain area. The reasons for this conclusion are summarized as responses to the indicators of significance developed earlier.

- Is there a symbiotic relationship among land, religion, and people that represents an important attachment to the land, and are there sacred places in use today that symbolize this relationship?

Navajo religious philosophy has as its core the belief that the universe is orderly, all-inclusive, and a unity of interrelated elements. Man's relations with these elements is governed by the principle of reciprocity. The intended or unintended disruption of this harmony results in illness. To obviate this condition and to insure well-being, prayers and chants are offered to the supernatural powers immanent in nature. These powers are interrelated and together form the whole. Animals and plants have the capacity of assuming human form and mountains are said to have anthropomorphic inner forms.

Sacred places tend to be: 1) mentioned in legends; 2) places where something supernatural has happened; 3) a site from which plants, herbs, minerals, and waters possessing healing powers may be taken; and where man communicates with the supernatural world by means of prayers and offerings.

Water sources, especially springs, comprise the majority of the sacred places in the study area. This water is used for human and livestock consumption. The relationship of water, found in sacred places, is important in subsistence land use, kin boundaries, and the relationships between peoples. It may also be important with respect to other sacred places. Our investigations suggest that particular places tend to be associated with particular kin-territorial units. Big Mountain as a sacred place tends to be the exception as its importance is recognized across kin lines. Relations through time with ancestors further reinforces the interrelations between religion and land as is discussed below. The theme of a symbiotic relationship between water, land, and social organization is well established in the literature. This inquiry suggests that sacred places and the spiritual beliefs of the people may be part of these dynamics.

Although there appear to be a number of sacred places that symbolize the relationships, we know most at this stage about Big Mountain. Big Mountain is the home of Begochidi, a very important generative force in Navajo mythology.

- Does the place play an important role in the origin myth of the people?

To many people at Big Mountain, Big Mountain is the home of Begochidi. We were not able to elicit legends and myths about Begochidi from the residents, but a review of the literature of creation and origin shows that Begochidi is mentioned frequently.

- Can shrines or places of offering be moved or relocated?

The fact that legend, a supernatural occurrance, or communication with supernatural beings is geographized in Navajo religion precludes the relocation of sacred places. The best example of this is Big Mountain.

- Has the area been used for a long time, continuously, and frequently?

Several residents pointed out that Navajos have been in the area since the Emergence. Our meager data suggest that ancestors of some of the people currently were in the area in the 19th century, possibly as early as 1820. Continuity and longevity seem indicated by statements made by informants. Whether or not the sacred places have been in use for as long is difficult to say, but the fact that current residents were taught how to pray and make offerings at the sites by their grandparents suggests that a similar pattern of the use of sacred places existed in the past.

- Do people today feel as they have in the past toward the sacred areas?

All of the respondents interviewed spoke strongly of their feelings for the area. The older persons seemed especially to identify with places having sacred meaning. Some concern was expressed that the young did not understand in the same way; however, no young people were interviewed.

- Does the area symbolize unity and continuity of the people?

Land use areas and patterns of land use established through ancestors, association of particular places with particular kin-territorial units, and the fact that ancestors are buried in the area, all strongly reinforce unity.

- Do ceremonies and rituals "bind" people to the specific locations?

Reciprocity through their offerings and prayers and chants to the Holy People tends to reinforce occupancy of the area. Not only is it important to offer these prayers and chants, it is also important to receive blessings.

- Can the ceremonies and rituals be carried out elsewhere?

Not the ones that symbolize unity and continuity of the people in the area, obviously. It is possible that healing ceremonies might be held elsewhere, but the preferred place is at home.

RATIONALE FOR FURTHER ACTION

There is a need for a more detailed, comprehensive study to ascertain the religious significance of the Big Mountain area. The determination of need is based on a general will to insure the inherent right of Native Americans, specifically the Navajo in this case, to practice and prescrve their traditional beliefs.

A comprehensive study would do much to foster the trust and confidence of residents. The committment to obtaining added knowledge of the significance of the area's sacred places and the relationship of these places to the land and medical practices addresses residents' concern that these have previously not been fully recognized. As Senator Abourezk has noted:

> Based on available information, it appears that in nearly all cases the infringements which have occurred have not resulted from an expressed Federal policy, but rather from a lack of policy at the Federal level..Lack of knowledge, unawareness, insensitivity, and neglect are the keynotes of the Federal Government's interaction with traditional Indians' religions and culture (1978:4-5).

Findings from additional research should provide the basis for informed decision-making concerning the potential reapportionment of lands identified as Area A and Area B, should that need arise.

For the Big Mountain area it appears that the legal provision for access alone may result in infringement of rights, if the suggested interdependency of sacred places and occupancy is borne out.

With the possible reapportionment of available lands, a solid information base could serve to direct administrative policy towards a just decision regarding the preservation of religious freedom in the Big Mountain area.

The rationale for being attentive to religious freedom is implied in the Constitution, the Bill of Rights, State and Tribal Constitutions, the

1968 Indian Civil Rights Act, Public Law 93-531, and Public Law 95-341.

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APPENDIX 1

INDIVIDUALS INTERVIEWED OR INDIVIDUALS FROM WHOM STATEMENTS WERE RECEIVED [1]

Individual [3]	Sex	Birthdate [2]
A	Female	03/15/29
B	Female	12/25/17
C	Male	12/22/12
D	Male	02/04/25
F	Male	01/01/12
G	Female	?
H	Male	02/15/25
J	Female	01/01/08
K	Female	01/01/03
L	Female	09/15/14
M	Female	12/25/40
N	Female	11/05/22
O	Male	12/15/09

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[1] All individuals have residences or maintain improvements in the Big Mountain area, some on the Hopi side of the partition line and some on the Navajo side.

[2] Birthdates were obtained from the Flagstaff Administrative Office of the Bureau of Indian Affairs enumeration of the former Joint Use Area.

[3] Special knowledge of informants: B is the spouse of a chanter.
F knows herbs and helps chanters.
K is a herbalist, hand-trembler, and helps chanters.

APPENDIX 2

INTERVIEW OCCASIONS OR INFORMATION SOURCES [1]

(1) Resolution presented by the Big Mountain Committee, prepared by M. no date.

(2) Notes taken by Navajo and Hopi Relocation personnel (NHIRC) from interview with A on site, 12/4/78.

(3) Notes taken by NHIRC from interview with B on site, 12/4/78.

(4) C on site, 12/5/78.

(5) C on site, 12/5/78.

(6) D on site, no date.

(7) F on site, no date.

(8) F on site, no date.

(9) C, place and date unknown.

(10) F on site, no date.

(11) C on site, no date.

(12) F on site, no date.

(13) F on site, no date.

(14) G on site, no date.

(15) H on site, no date.

(16) H on site, no date.

(17) J on site, no date.

(18) H on site, no date.

(19) D at home, no date.

(20) Transcript of statement to NHIRC by J and family, no date.

(21) Transcript of statement to NHIRC by O and family, no date.

(22) Transcript of statement to NHIRC by H and N, no date.

(23) Notes taken by NAU research team, Joseph Shelton interpreter, in interview with D at home, 12/28,78.

(24) Notes taken by NAU research team, Joseph Shelton interpreter, in interview with K in D's home, 12/28/78.

(25) Notes taken by NAU research team, Joseph Shelton interpreter, in interview with B at home, 12/29/78.

(26) Transcript of tape of interview (25) translated by NHIRC personnel.

(27) Notes taken by NAU research team, conducted in English, in interview with L at home, 12/29/78.

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[1] Interviews by NHIRC personnel took place between 12/4/78 and 12/6/78 with Joseph Shelton and Jim Dalgai as interpreters. All translations were done by NHIRC staff. On site refers to an interview taken at the site of a sacred place. Occasions (4) through (19) are transcripts of tape of NHIRC interview.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al.,)
)
Plaintiffs,) CIVIL NO. ____
)
-vs-)
)
UNITED STATES OF AMERICA, et al.,) AFFIDAVIT OF
) **JOHN J. WOOD**
Defendants.)
)
)

STATE OF ARIZONA)
) ss:
COUNTY OF NAVAJO)

Now Comes John J. Wood, who being fully sworn, deposes and says,

I. FORCED RELOCATION DENIES THE NAVAJOS THE ABILITY TO PRACTICE THEIR RELIGION.

1. I have a M.A. (1964) and a Ph.D. (1967) in Anthropology from the University of Colorado. I am presently a Professor of Anthropology at Northern Arizona University where I have been teaching since 1966. Throughout my career I have focused much of my attention on Navajo Indians. A partial list of my publications include: 1985 Navajo Livestock Reduction, Nomadic Peoples, No. 19, Commission on Nomadic Peoples, International Union of Anthropological and Ethnological Sciences; 1983 Sheep is Life: An Assessment of Livestock Reduction in the Former Navajo-Hopi Joint Use Area, NAV Anthropological Paper No. 1, Flagstaff, With W.M. Vannette and M.J. Andrews; 1982 Western

Navajo Religious Affiliations. In *Navajo Religion and Culture: Selected Views*, pp. 176-186, edited by D.M. Brugge and C.J. Frisbie, Museum of New Mexico, Papers in Anthropology, No. 17. Sante Fe; and 1980 Rural Western Navajo Household Income Stategies. *American Ethnologist* 7(3): 493-503. In addition, some of my reports include: 1981 Characteristics of the Population Subject to Relocation by the Navajo and Hopi Indian Relocation Commission, as of April 1, 1981, Flagstaff: Navajo and Hopi Indian Relocation Commission; 1981 Land and Religion at Big Mountain: The Effects of the Navajo-Hopi Land Dispute on Navajo Well-being. A Report to Congress on Behalf of the Big Mountain Community. (attached as Exhibit 1)./ 1980 Population Characteristics of Relocatees, A Chapter in the Navajo and Hopi Indian Relocation Report and Plan to Congress; 1979 A Preliminary Assessment of the Significance of Navajo Sacred Places in the Vicinity of Big Mountain, Arizona, Navajo and Hopi Indian Relocation Commission, with W.M. Vannette (attached as Exhibit 2); 1979, A Sociocultural Assessment of the Livestock Reduction Program in the Navajo-Hopi Joint Use Aea, Flagstaff Administrative Office, Bureau of Indian Affairs, With W.M. Vannette and M.J. Andrews. I have also presented 7 papers on topics such as the Navajo religion, relocation and livestock impoundment for such organizations as the Society for Applied Anthropology, Navajo Studies Conference, American Anthropological Association, and the Museum of Northern Arizona.

2. In the Navajo view, the universe is an unfolding order, evolving according to a kind of divine plan. In this plan

everything has its specific place and function, and things happen in an orderly way. The net result is an organic universe in balance; hence, everything is alive in the sense of an indwelling, inner form or spirit, and interdependent.

3. Navajo Religion came into being with the Navajo themselves in mythic times. There were a series of underworlds, in which the primordial forms, patterns and processes of the universe evolved, including the Holy People, prototypical humans, and other beings. Following the "Emergence" into the present world, the earth was made ready for the Navajo: the sacred geography of the present world was established; the hero twins, sons of Changing Woman and the Sun, rid the earth of monstrous evils; the first home or "hogan" was constructed; the first ceremonies that have since become the core of traditional Navajo religion and culture were initiated; and the Navajo themselves were placed on the land with the responsibility for doing their part in maintaining the fundamental harmony of the universe.

4. According to the American sociologist G. Lenski, a religion is "...a system of beliefs about the nature of the force(s) ultimately shaping man's destiny, and practices associated therewith, shared by members of a group". These beliefs and practices are usually associated with spiritual beings and powers. (G. Lenski. The Religious Factor: A Sociological Study of Religion's Impact on Politics, Economics, and Family Life. Revised Edition. 1961. Garden City, New York: Anchor Books.

5. Religions inform the lives of their believers and practitioners by providing value and meaning. They explain why and how the universe came into being; they validate beliefs; and they provide security and indentity. It is not surprising, therefore, that all peoples have a religion or religions.

6. Although all peoples have religions, not all religions take the same form or start from the same assumptions. As an example to the point of the present discussion, we find that traditional Navajo religion and religions in the Judeo-Christian tradition each inform the lives of their believers, explain, validate, and provide security and identity, yet they do so in rather different ways.

7. In the Judeo-Christian traditions spiritual beings and powers are transcendent: that is, they are exalted above and set apart from the universe. In traditional Navajo religion spiritual beings and powers are immanent; they are indwelling, and inherent in the universe. Navajo relationships with beings and powers are based on the principle of reciprocity. There is an obligation on the part of both spiritual beings and powers and Navajos to meet their respective responsibilities. The relationships with spiritual beings and powers in the Judeo-Christian traditions is one of dependency on the part of humans. Judeo-Christian traditions thus emphasize petitioning spiritual beings and powers, rather than reprocity.

8. Religion is an institution in Judeo-Christian traditions; it is pervasive in Navajo culture -- religion is the

same as the Navajo way of life. Participation in religion among the Navajo is thus based on use, while in the Judeo-Christian traditions participation tends to based on membership. In these basic assumptions, the Judeo-Christian traditions have much in common with other universal religions, such as Islam and Buddhism, and Navajo religion shares much with the non-universal religions of other Native Americans, Africans, and Asians.

9. We must be careful, then, not to assume that the specific beliefs and practices of the Judeo-Christian traditions define Religion; they clearly do not. They define specific religions with specific histories. To understand other religions, such as Navajo religion, one cannot start from one's own specific religious assumptions.

10. Traditional Navajo religious beliefs are not codified in a "sacred book"; theirs is a tradition that has been transmitted from generation to generation by observation of and participation in ceremonies, by listening to the wisdom of stories of sacred beings and events, and by living the Navajo Way. The same observation can be made for the early teachings of Christianity, or Islam, or Buddhism. For many years, hundreds in some instances, teachings of these familiar religions were transmitted orally.

11. Some of the principal Navajo sacred legends were recorded as early as the late 19th century by United States Army physician Washington Matthews. These works and many subsequent transcriptions by scholars such as Gladys Reichard, Leland Wyman

and Karl Luckert have generated a body of sacred texts that permit us to describe many Navajo religious beliefs, and practices with confidence.

12. There are specialists, sometimes called medicine men or women, who have spent a large part of their lives and talents carefully preserving, using, and transmitting their sacred knowledge. Traditional Navajos share a core of beliefs that they have learned from these specialists by listening to their advice and by participating in ceremonies, and by following the teachings in their daily lives.

13. Chief among these beliefs is the understanding that everything is interrelated, that the ideal state of being of this interre4lated whole is balance or harmony, and that the maintenance of this state of order, established by the Holy People, is the responsibility of individual Navajos and their families.

14. Leland Wyman observes that: "Improper contact with inherently dangerous powers -- even though it be indirect, unintentional or unconscious -- or the breaching of traditional restrictions (taboos) may lead to illness, the price man pays for disturbance of the normal order, harmony, or balance among elements in the universe". (Leland C. Wyman. The Mountainway of the Navajo. 1975. Tucson: The University of Arizona Press.)

15. Ceremonies that are mostly curative, occasional, and personal, and prayers and offerings restore and maintain the harmony and balance, exorcise evil, and protect from danger.

(John J. Wood and Walter M. Vannette. A Preliminary Assessment of the Significance of Navajo Sacred Places in the Vicinity of Big Mountain, Arizona. Report prepared for the Navajo and Hopi Relocation Commission. 1975. Flagstaff, Arizona.)

16. The traditional Navajo do not build religious edifices as we know them. Their "church" is the world bounded by four sacred mountains, and their traditional home, the hogan, is a model of that world, from the details of its construction to the placement of the fire and the orientation of the doorway. Thus, traditional ceremonies are held in the family's hogan. But the sacred can manifest itself anywhere; in trees, mountains, springs, or plants. Proper attention to the irruption of the sacred requires offerings, prayers, and, in some cases, that shrines be constructed.

17. One of the most central and fundamental ceremonies is Blessingway. The purpose of the ceremony is to establish a state of balance or harmony. Blessingway songs are sung at the end of every ceremony. Blessingway is also the core of the initiation of young girls into womanhood, and new homes are blessed with songs from the ceremony. Its legends tell of the events after the Emergence, the construction of the hogan, and the sacred geography of the Navajo; hence, Blessingway is perhaps the most important religious facet of traditional Navajo identity.

18. The thread running through traditional Navajo culture that defines well-being, indeed life itself, is a

religion that has enabled the Navajo to retain their identity in a rapidly changing world. Religion as lived by the traditional Navajo is life, the land, and well-being.

19. Sacred places and practices are part of the definition of occupancy; to limit people to "use and access" of sacred places without occupancy betrays a fundamental misunderstanding of the nature of traditional Navajo religion.

20. First, the land and home (the hogan), the reproductive powers of nature, and the origins of the Navajo Way are closely tied together in legend and ceremony. The first tie to the land occurs when the afterbirth is offered to a young tree so as the young tree grows the child grows. The tree stands in a lifelong relationship to the person and prayers and offerings are made there throughout one's lifetime.

21. Learning how to live means praying to and giving thanks for what gives life: Mother Earth, the Sun, Fire, and Air. Each has gods or Holy People dwelling within. There are prayers and offerings at special places -- like springs, shrines, flat areas, young trees, and at home -- for well-being, protection, and blessings received that must be learned and passed on.

22. Sacred place is commonly expressed as a place of offering. A place is sacred because it is possible to communicate there with the Holy People through prayer and offering. The Holy People cannot be seen, but their presence is known through air movements and vibrations, a certain kind of

light, pictographs, noises, and through legends.

23. There are several consistent qualitative associations, such as kinds of places, atmospheric conditions, or times, that provide needed access to the Holy People. Mountains, watercourses, springs, hills, flat areas, at young trees, and at home are common places for prayer and offering. There are also shrines.

24. Families' traditional use areas are bounded by sacred places where Holy People dwell. Parents and grandparents teach their children and grandchildren the prayers and offerings that must be made at these places to insure well-being and protection. The land outside of this protective line is potentially dangerous. Also, faimilies have responsibility as caretakers of the land; the prayers and offerings must be continued to maintain the essential order of balance and harmony.

25. Sacred places are used on a regular basis by local families, and some are used regionally. Big Mountain on Hopi-Partitioned lands is an example of a site with regional significance. The mountain is a very important Holy Person, mentioned frequently in the literature of Navajo religion. "He is the one that created man", said one resident. There is a shrine on Big Mountain said to have been built by Holy People when the universe was being formed. It was built for the use of the Navajo people.

26. Thus sacred places are part of the privilege and responsibility of living on the land; hence they are part of the definition of occupancy.

27. As we noted in our report on Big Mountain: "For traditional people such as these, forced relocation will be cataclysmic: It will take away their only means of coping, their reason for being, by blocking the expression of their religious beliefs and practices". (Wood and Stemmler, Land and Religion at Big Mountain: The Effects of the Navajo-Hopi Land Dispute on Navajo Well-Being [1981]; Prepared for and submitted to Congress.)

28. There are two categories of reasons why occupancy is essential for the exercise of traditional Navajo beliefs: The first includes reasons why one should stay on one's traditional use area. The second includes reasons why one could not live in a "foreign" place.

29. One should stay on one's traditional use area because of the responsibility for taking care of the land, in a spiritual sense. As one Big Mountain resident put it: "The places were handed down from my mother and father. They told me to use it. They told me to live on that land. If we don't pray there, if that prayer is not offered and we relocate and are no longer there, the Holy People might think humans are no longer in existence and that may bring the future evolution to another time. I don't want this evolution to occur that soon. I want my children to live and my grandchildren to live."

30. In other words, there may be a new, unknown, and potentially dangerous order of things if families cannot meet their responsibility for taking care of the land. The sacred

places in a family's traditional use area define a zone of protection; for the family this is analogous to the zone of protection for the Navajo as a whole within the four sacred mountains. People feel spiritually safe and secure within their zones of protection.

31. There are also serious problems in moving to unknown "foreign" land, as the following quotation from a resident of Big Mountain in the Hopi-Partitioned Lands clearly indicates: "We are not familiar with many places, we are not familiar with many areas. Because we have never been there, there might be a place where people are not supposed to go that is for something else, and we might be living there. Or maybe we might go to a spring where our people were forbidden. And here we thought it was a good place and we go there and we conflict with the Holy People that protect those areas. This we could not know because our grandfathers and our mothers and fathers did not tell us, because we never knew that things like this relocation would ever take place."

32. As noted above, the traditional Navajo belief is that "Improper contact with inherently dangerous powers...may lead to illness, the price man pays for disturbance of the normal order, harmony, or balance among elements in the univers." (Wyman, op. cit.) Moving to "foreign" land could bring persons into contact with dangerous powers that could cause illness.

33. A related concern for traditional Navajos moving to "foreign" lands is a lack of knowledge of places where one can

communicate with the Holy People; in other words, sacred places. People will wonder where, for example, certain ceremonies may or must be held.

34. These issues are even more significant today than they were a generation ago. Much of the specialized religious knowledge is held by elderly medicine people, and by the grandparental generation. With the passing on of these persons, the likelihood of finding persons who know, or can determine, places to avoid or places where one may communicate with the Holy People is greatly diminished.

35. In a random sample of heads of household from the Former Joint Use Area interviewed in 1977, nearly 60 percent mentioned "traditional", when asked about religious affiliation. (John J. Wood. Western Navajo Religious Affiliations. In Navajo Religion and Culture: Selected Views. 1982. Santa Fe: Museum of New Mexico Press.) Thus, I estimate that in at least 60 percent of the households scheduled for forced relocation, someone would be unable to practice their religion as they believe it should be practiced. This figure is probably conservative, because it has been reasonably well-established that persons who are resisting relocation tend to be traditional. (Jennie R. Joe. Final Report: The Effects of Forced Relocation of a Traditional People. 1985. San Francisco: Institute for Scientific Analysis.

II. LIVESTOCK IMPOUNDMENT, FENCING, AND THE CONSTRUCTION FREEZE HAVE FORCED MANY NAVAJOS TO RELOCATE

36. Livestock reduction, fencing and a building freeze

have blocked the satisfaction of basic needs, and the fear of relocation has contributed to a malaise that has significantly diminished the well-being of Navajos living on Hopi-Partitioned Lands. The explanation for the origin of this malaise is in the special relationship of Navajos with their land, as discussed previously, and their livestock.

37. My knowledge of the effects of livestock reduction and grazing regulations in the Former Navajo-Hopi Joint Use Area and on Hopi-Partitioned Lands is based on thorough research sponsored by the Bureau of Indian Affairs in 1977 (reported in detail in "Sheep Is Life", op. cit.), interviews with 25 persons at Big Mountain in 1981, and interviews with members of three families from Coalmine Mesa, Big Mountain, and Low Mountain in 1984. The latter persons and families are residents of Hopi-Partitioned Lands scheduled for relocation. In addition, I see Navajo students whose families live on Hopi-Partitioned Lands in my role as a Professor at Northern Arizona University, and I ask them about their families' well-being.

38. Much of what follows is quoted or paraphrased from my unpublished papers titled; "There Is No Place But Here: Rural Navajo Perceptions of Livestock Reduction and Impending Relocation", presented at the 83rd Annual Meeting of the American Anthropological Association in Denver, Colorado, November 17, 1984; "Economic Implications of Navajo Livestock Reduction, presented at the 40th Annual Meeting of the Society for Applied Anthropology, Denver, Colorado, March 21, 1980; and "Minimum

Livestock Numbers for Navajo Households on Hopi-Partitioned Lands", in my possession, dated January 11, 1982.

39. In addition to the threat of forced relocation, there are two other issues of importance affecting peoples' sense of well-being: The first is a court-ordered freeze on new construction in effect since 1972. The second is a Bureau of Indian Affairs administered program of livestock reduction mandated by Public Law 93-531 which began in 1976. Today a family residing on Hopi-Partitioned Lands (HPL) can request a permit for up to 10 animals from the Hopi Tribe. The average herd size assessed near the beginning of the reduction program was over three times as large (Wood, Vannette, and Andrews 1982). The building freeze has accelerated the trend of young people emigrating from rural areas so that the permanent residents of the HPL are older, less education formally, and more dependent upon livestock than the Navajo people as a whole. Young people cannot build on the HPL, but they frequently return home on weekends and holidays, from school and work, and help out.

40. The economic situation in the Former Navajo-Hopi Joint Use Area in 1977 was bleak, and there is no indication that it has gotten any better in the HPL. In 1977, the median household income, from January through October or November, was $5,860. Only 23.7 percent of the permanent household members in our research sample who were 16 years of age or older were employed. Some form of income maintenance or retirement was received in 71.2 percent of the households. Large expenditures

for food and transportation strain household budgets.

41 Livestock income contributed 29 percent of the aggregate income in 1977. The principal uses of livestock are economic. People butcher sheep and goats regularly, depending upon availability and upon special occasions such as weekend visits by relatives, holidays, and ceremonies. Livestock are also used for exchange, for example, for the services of a medicine man. In times past, lamb crops were collateral for credit at trading posts and animals were sold for cash income. Livestock are the single most important form of capital for rural Navajos.

42. Livestock are important in other ways. The are used to teach children and grandchildren about life, about how and why things happen, and about responsibility. The are on the minds of older people constantly; older persons like to be around them and the worry about them when they are not around to watch over them. Their worrying today is exacerbated by the fear that livestock will be impounded while they are gone. Individual animals are earmarked for family members in the family herd, thus they at once symbolize important Navajo cultural values of individuality and collectivity. In the past the prevailing residence mode led to the development of clan-focused use areas. Grazing rights still act as de facto title to these areas.

43. Livestock reduction, fencing, and the building freeze have blocked satisfaction of basic needs -- physiological, psychological, and social needs -- which has led to symptoms of

distress indicating a high level of frustration. The threat of relocation adds to anxiety and depression. Some comments from interviews with persons illustrate the level of distress:

> "I shed tears each day when I think what is going to happen."
>
> "Just a few weeks ago I got sick with cold and (it) almost killed me. Maybe that's what's going to kill us. Just a cold when we leave this area. Because even now, somehow we ... maybe because of uncertain future we are not that strong anymore."
>
> "The land dispute is really bothering me; it is hurting me physically and mentally. I can't sleep, my heart is hurting. Its bothering me a lot, my son..."
>
> Right now our stock has been reduced. We feel like we are being thrown into a hole. Our sheep, our life is being taken away. I think about the children, the grandchildren- - what will happen to them?"

44. The current allocation of livestock in Hopi-Partitioned Lands is based on a fixed number of stock per person, so that larger households receive larger numbers. But the number of permanent household residents is, for all intents and purposes, uncorrelated with either proportion of livestock income or total livestock income. The only statistically significant non-livestock relationships with proportion of livestock income are total household wage income and years of education for the household head. Both relationships are negative, which means as wage income and education decrease, the proportion of livestock income increases. Livestock are truly a means of survival for the unskilled and uneducated.

45. The impacts of the livestock reduction program and

the grazing regulations on Hopi-Partitioned Lands have been severe, and have most seriously affected those with the fewest alternatives -- the unskilled and uneducated. People complain of hunger and inadequate diet and economic hardships; they are worried about the loss of their way of life and traditional values; and they are lonely and depressed much of the time. These impacts are cumulative in nature, and the HPL grazing regulations that followed upon the heels of the livestock reduction have been in effect for almost 10 years.

46. Livestock reduction, the building freeze, the lack of economic development, and the stress and anxiety of an uncertain future have literally forced persons who have the necessary skills to make it elsewhere to relocate. The older, unskilled, more traditional people have often stayed behind to care for the land and the remaining livestock.

47. The livestock reduction program and the HPL grazing regulations are literally forcing traditional people to make an impossible choice, from their perspective: to be weakened, hungry, lonely, and depressed or to relocate. There has been no forced relocation in a physical sense, but livestock reduction , the building freeze, the departure of children and grandchildren, have, I have heard, convinced some traditional people to abandon their sacred land and responsibility in order to survive physically, and psychologically.

48. Many of the traditional Navajo who have stayed on the land have told me, and others, that they will resist

relocation because of their feelings for the land. One elderly gentleman, for example, said that "they" will have to drag him out by the heels (which means he will die first). Their strength and resolve is impressive, but one must wonder how long they can last if the situation continues.

John J. Wood
JOHN J. WOOD

Sworn to before me this
20th day of ~~December~~, ~~1987.~~
January, 1988

Velvadine Edwards
NOTARY PUBLIC for the State of Arizona, County of Maricopa

My commission expires March 25, 1988.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al,)
)
Plaintiffs,) CIV. NO.
)
-vs-) AFFIDAVIT OF
) KEE SHAY
UNITED STATES OF AMERICA, et al.,)
)
Defendants.)
)
)

STATE OF ARIZONA)
) ss.:
COUNTY OF NAVAJO)

KEE SHAY, being duly sworn, deposes and says:

1. My name is Kee Shay. I am from Big Mountain. My maternal clan is Tabaaha (Edgewater) clan and my paternal clan is the Salt clan.

2. In our way, we have been taught that the sun rises and the sun sets. There is day and night with their own path. There is no way anyone can change that. The Dineh, especially the traditional elders, are like that too; we cannot change. We were placed by our Creator on this land between the four Sacred Mountains not somewhere else, we were given the responsibility to caretake this land by the Holy People, not some other foreign land where we are not known. Washington tells us we must relocate elsewhere, but Washington does not understand why we must stay here. My

land is sacred, it is what you would call my religion, no one, including Washington, can take that away from the Dineh. We will never leave. Just like the sun rises and the sun sets some things cannot be changed. We Dineh were placed here and we will not go, even Washington cannot change that. The Dineh were created by our Holy People with sacredness, prayer, and ceremony. These things were created for the Dineh here on earth. We live within our sacred mountains, we live according to our sacred songs and prayers; it has always been this way. From the beginning of time up to now the Dineh people have lived according to our spiritual instructions.

3. Now we are told, you who are named here, move out. This order is from Washington and is trying to separate the people from our homeland. This is an evil thing which violates the natural laws. By what power or natural right does he make this demand. He does not know our natural laws that the Creator has instructed us to live by. The elders, the men and the women, with their children, live first by this natural law, the Creator's law, that is passed on from one generation to the next and it has been this way from the beginning of time.

4. From the beginning of mankind, Big Mountain was here. We are not going anywhere; we live in balance and harmony with the land here. This is the way it is. If we want to make a

garden, a house, the Creator and the spiritual beings know us this way and accept us and watch over us. Through prayers and songs from the beginning, the Creator knows us. Washington can not know or understand our obligation to perform our ceremonies and prayers each and every day here on our land so that we carry out this responsibility to those of the other worlds.

5. Leave us to our prayers and our way of life. This is better for us. Because of this we live in a holy, sacred environment. The plants are our healers for all kinds of ailments that we have. We have not forgotten these, nor have we outlived them. In this way they do not forget us and they heal and protect us.

6. The nurse at IHS hospital works very hard to cure us and gives us cough drops, but they are not effective. They cannot heal us; we have our own herbal cures. It is here we know how to use the herbs, how to bring out the healing powers of the herbs by calling to the spiritual beings of the herbs. We cannot use herbs in a foreign area where we do not know the spiritual beings. They would not hear us.

7. This law that was passed must respect and allow for those who are sincere in their religious practice, and in that way consent to let the traditional people remain in their sacred homeland. This is best for all.

8. When you take these statements to Washington, maybe then they will understand and realize that we live by the divine laws that are given us by the Creator of all things. Then they will know that our boundaries are within the four sacred mountains and two sacred rivers. Without this knowledge, how can you ask someone to leave his home. It is against the laws of nature. How is it that Washington can do a thing like this?

9. Maybe if we teach the white man a little about our sacred way of life, they will understand how we have these special spiritual ties to our land and how we can never leave our sacred homeland. The white man can practice his religion anywhere, he does not know the earth. The Dineh are different, the land is sacred to us, we cannot practice our religion elsewhere, only on the land where we are known. Even though we are different than the white man, they try to treat us like the white man and move us all over the place. Washington does not understand us. That is why I am making this statement so that Washington will understand us and how our land, our religion, our lives are all one living thing which can not be undone. That is why we cannot relocate.

10. When the white man talks of relocation he talks of finding a new place to live, a new job, a new place to pray to his God. The land where he inhabits is a stranger to him so it

does not matter if and where he relocates to. The white man has destroyed most of the native people in this world, now he has come for us. We will not go.

11. The land is my relative, we are one, we are all connected and interrelated. The Creator placed the Dine' between the sacred mountains. But we are not alone, we live among and are related to all creations. The earth is our mother, the sky is our father. We are related to every living thing, and even the clouds, the buttes, springs, rocks; they all have spirits and they are also our relatives.

12. According to the Creator's instruction, the universe is in balance and harmony. Everything has a purpose. The Creator placed me here as caretaker of this land. Sometimes things may go out of balance, and if we are not there to repair the balance, who would? If we were not here to call to the spiritual beings to return the balance, the Holy People would miss us, they would know something is wrong. The Holy People would see that there were less Dine' people on their land they would show signs to the Dine' such as bad problems in the Universe to make people realize why they can never leave their sacred homeland. I see those signs of imbalance now. That is why I cannot leave, I must respect the Creator's law. The laws made in Washington are made by five fingered beings. These beings are only human beings like us. We can not follow the words of another human being

against our Creator.

13. Here on our land we are familiar with the springs, rocks, mountains, hills, etc., they are familiar with us. We cannot forget these places and find new places. We do not just know these places but the spiritual beings at these places. We have been introduced to these places before we were ever born. It is like your family, you must stay with these places, these spirits. You could not leave your relatives if they were sick - it is in this way that we must stay with this land, our relative. It is in this way that each day I come to know my relatives here a little better. This is how we know the spiritual ones from our birth.

14. When the woman is pregnant, she will have a Blessingway ceremony performed for her and the unborn baby so that she will have an easy birth and the baby will be born in good health. At that time the unborn baby is introduced to the spiritual beings and begins to know the spiritual beings.

15. We perform many different things when a child is born so the child will be familiar with the spiritual beings of the area. At birth the woman offers the afterbirth to a young tree and buries the child's umbilical cord in Mother Earth. These things create spiritual ties between us and the land.

16. The same thing with the cradleboard. We make a cradleboard out of a cedar tree to hold the child close to all things that are important to the Dine' people. The bottom of the cradleboard represents Mother Earth and Father Sky. On the top of the cradleboard there is a curved piece of wood which represents the rainbow. The board at the bottom represents the sacred mountains. The strings represent lightning. In this way the child is held close to all things important to the Dine' people.

17. All of these things create spiritual ties between us and the land. That is one of the ways we are known here, by the spiritual beings. We know the spiritual beings at our offering places here, in the springs, rocks, buttes, etc. We cannot make prayers at any spring or rock, only the ones where we know the spiritual beings. These places are sacred to us. We cannot practice our religion anywhere else. For the white man they say he only knows his Creator for one day in the week. For him maybe this is enough. This is not enough for the Dineh. We are in our church every minute that we live or breathe. These things the whites cannot understand.

18. We are familiar with our land. We know where to go and where not to go. There are places where dangerous spirits may exist such as burial sites. Those places must be

avoided and should not be disturbed. If I relocated I might disturb one of these places without knowing it, then I or my family will suffer and die." If this would happen I would not know the plants, the songs, or the spiritual beings inthat land and would not be able to cure us.

19. We also wouldn't be able to make our prayers. There are certain places that are sacred to us, these places have been passed down through the generations. We are familiar with these places, we know the spiritual beings at these places, we know how to use these places, we cannot leave them and go to some foreign land where we are not known. It is only in these places that I know, that I can be heard with my prayer.

20. Our religion is here, on our land, not somewhere else. Big Mountain is a shrine where sacred sacraments are offered from the beginning of time. It is also a place where we gather many of our medicinal herbs. The natural springs on the mountain are also shrines where we offer many corn pollens. We the inhabitants of Big Mountain live this way. Laws have been passed against us, fences are strung around us, our livestock are taken away from us, and yet our expectations of life are different, for we seek harmony and compatibility which is the way of our ancestors.

21. We pray without ceasing for our survival here, not somewhere

else, we have no thought of relocation.

22. The people who have relocated out of their sacred homeland have suffered a great deal, and many have returned to their former homes. This is the path of relocation for those who have consented, but for those who follow the Creator's law and stay on their homeland, they have also suffered a lot because of the threat that someday they will come and remove us from our sacred land. We have also had our lives injured by the government who has stolen our livestock and who tries to make us live in old homes that we can not repair so that the old ones and the children are always sick.

23. If you have knowledge of Navajo sacred way of life, how can you not know what it is to relocate somewhere else. How would one pray to the Creator when you have broken the Creator's law in order to follow the white man's law? Tell them you have our views on your paper.

24. For many years now we have lived under the threat of relocation. Our livestock have been impounded, we cannot build new homes, we feel as if any day they may come and drag us away from our land. I cannot live like this. It's been long enough, the deadline for relocation was in July of 1986, over a year and a half ago. We are still here and will always be here.

25. Life is hard here now that Washington has taken away almost

all of our sheep. Sometimes we think we may not be able to survive because we have so few sheep to eat. But I will never relocate, never abandon my sacred lands.

26. Allow us to live and practice our religion, the ways of our ancestors. I believe what I have said. What I have just told you would not be any different from what the other elders would tell you, for the record these are my thoughts.

27. I tell the young people to persevere, aspire to learn and discipline yourself in the sacred philosophy of our ancestors. In a time when there is more encouragement for the white man's education and employment, I encourage you to persist in your knowledge of the self. This is the Dineh way.

28. Many of our young have pursued white man's education and jobs but struggle endlessly with it. Therefore there are many of our young who are illiterate in our way. We observe these young people, who we are told have been educated, roam aimlessly and seek mischievous activities, abandoning their elders and their parents to struggle with survival.

29. There is a need to evaluate the type of education that is offered the youth and seek alternatives on how to strengthen their moral values.

30. According to our religious philosophy, if the prayers, songs and practice of rituals are observed, these harmful or evil activities would not occur among our youth because the Creator has laid a firm foundation to guide them. These are the lessons that the old ones teach us.

31. All of this Washington is trying to destroy. He takes us away from our land, he destroys our culture and ultimately our people. Our land is our way of life, our religion. It is why we are here, why we live. We will never abandon our sacred land. We have no thoughts of relocation.

Kee Shay
KEE SHAY

Subscribed and sworn to before me
this 20th day of January, 1988.

Betty A. Tso
NOTARY PUBLIC

My commission expires My Commission Expires Oct. , 1991 ____.

I, Betty A. Tso, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Affidavit of Kee Shay to the best of my ability and understanding and that Kee Shay did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

Betty A. Tso
INTERPRETER

Sworn and subscribed to this 20th day of January, 198[illegible].

Lu Brooke Phillips
NORTARY PUBLIC

My commissiom expires My Commission Expires Oct. ,1991.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al,)
)
Plaintiffs,) CIV. NO.
)
-vs-) AFFIDAVIT OF
) KEE SHAY
UNITED STATES OF AMERICA, et al.,)
)
Defendants.)
)
)

STATE OF ARIZONA)
) ss.:
COUNTY OF NAVAJO)

KEE SHAY, being duly sworn, deposes and says:

1. My name is Kee Shay. I am from Big Mountain. My maternal clan is Tabaaha (Edgewater) clan and my paternal clan is the Salt clan.

2. In our way, we have been taught that the sun rises and the sun sets. There is day and night with their own path. There is no way anyone can change that. The Dineh, especially the traditional elders, are like that too; we cannot change. We were placed by our Creator on this land between the four Sacred Mountains not somewhere else, we were given the responsibility to caretake this land by the Holy People, not some other foreign land where we are not known. Washington tells us we must relocate elsewhere, but Washington does not understand why we must stay here. My

land is sacred, it is what you would call my religion, no one, including Washington, can take that away from the Dineh. We will never leave. Just like the sun rises and the sun sets some things cannot be changed. We Dineh were placed here and we will not go, even Washington cannot change that. The Dineh were created by our Holy People with sacredness, prayer, and ceremony. These things were created for the Dineh here on earth. We live within our sacred mountains, we live according to our sacred songs and prayers; it has always been this way. From the beginning of time up to now the Dineh people have lived according to our spiritual instructions.

3. Now we are told, you who are named here, move out. This order is from Washington and is trying to separate the people from our homeland. This is an evil thing which violates the natural laws. By what power or natural right does he make this demand. He does not know our natural laws that the Creator has instructed us to live by. The elders, the men and the women, with their children, live first by this natural law, the Creator's law, that is passed on from one generation to the next and it has been this way from the beginning of time.

4. From the beginning of mankind, Big Mountain was here. We are not going anywhere; we live in balance and harmony with the land here. This is the way it is. If we want to make a

garden, a house, the Creator and the spiritual beings know us this way and accept us and watch over us. Through prayers and songs from the beginning, the Creator knows us. Washington can not know or understand our obligation to perform our ceremonies and prayers each and every day here on our land so that we carry out this responsibility to those of the other worlds.

5. Leave us to our prayers and our way of life. This is better for us. Because of this we live in a holy, sacred environment. The plants are our healers for all kinds of ailments that we have. We have not forgotten these, nor have we outlived them. In this way they do not forget us and they heal and protect us.

6. The nurse at IHS hospital works very hard to cure us and gives us cough drops, but they are not effective. They cannot heal us; we have our own herbal cures. It is here we know how to use the herbs, how to bring out the healing powers of the herbs by calling to the spiritual beings of the herbs. We cannot use herbs in a foreign area where we do not know the spiritual beings. They would not hear us.

7. This law that was passed must respect and allow for those who are sincere in their religious practice, and in that way consent to let the traditional people remain in their sacred homeland. This is best for all.

8. When you take these statements to Washington, maybe then they will understand and realize that we live by the divine laws that are given us by the Creator of all things. Then they will know that our boundaries are within the four sacred mountains and two sacred rivers. Without this knowledge, how can you ask someone to leave his home. It is against the laws of nature. How is it that Washington can do a thing like this?

9. Maybe if we teach the white man a little about our sacred way of life, they will understand how we have these special spiritual ties to our land and how we can never leave our sacred homeland. The white man can practice his religion anywhere, he does not know the earth. The Dineh are different, the land is sacred to us, we cannot practice our religion elsewhere, only on the land where we are known. Even though we are different than the white man, they try to treat us like the white man and move us all over the place. Washington does not understand us. That is why I am making this statement so that Washington will understand us and how our land, our religion, our lives are all one living thing which can not be undone. That is why we cannot relocate.

10. When the white man talks of relocation he talks of finding a new place to live, a new job, a new place to pray to his God. The land where he inhabits is a stranger to him so it

does not matter if and where he relocates to. The white man has destroyed most of the native people in this world, now he has come for us. We will not go.

11. The land is my relative, we are one, we are all connected and interrelated. The Creator placed the Dine' between the sacred mountains. But we are not alone, we live among and are related to all creations. The earth is our mother, the sky is our father. We are related to every living thing, and even the clouds, the buttes, springs, rocks; they all have spirits and they are also our relatives.

12. According to the Creator's instruction, the universe is in balance and harmony. Everything has a purpose. The Creator placed me here as caretaker of this land. Sometimes things may go out of balance, and if we are not there to repair the balance, who would? If we were not here to call to the spiritual beings to return the balance, the Holy People would miss us, they would know something is wrong. The Holy People would see that there were less Dine' people on their land they would show signs to the Dine' such as bad problems in the Universe to make people realize why they can never leave their sacred homeland. I see those signs of imbalance now. That is why I cannot leave, I must respect the Creator's law. The laws made in Washington are made by five fingered beings. These beings are only human beings like us. We can not follow the words of another human being

against our Creator.

13. Here on our land we are familiar with the springs, rocks, mountains, hills, etc., they are familiar with us. We cannot forget these places and find new places. We do not just know these places but the spiritual beings at these places. We have been introduced to these places before we were ever born. It is like your family, you must stay with these places, these spirits. You could not leave your relatives if they were sick - it is in this way that we must stay with this land, our relative. It is in this way that each day I come to know my relatives here a little better. This is how we know the spiritual ones from our birth.

14. When the woman is pregnant, she will have a Blessingway ceremony performed for her and the unborn baby so that she will have an easy birth and the baby will be born in good health. At that time the unborn baby is introduced to the spiritual beings and begins to know the spiritual beings.

15. We perform many different things when a child is born so the child will be familiar with the spiritual beings of the area. At birth the woman offers the afterbirth to a young tree and buries the child's umbilical cord in Mother Earth. These things create spiritual ties between us and the land.

16. The same thing with the cradleboard. We make a cradleboard out of a cedar tree to hold the child close to all things that are important to the Dine' people. The bottom of the cradleboard represents Mother Earth and Father Sky. On the top of the cradleboard there is a curved piece of wood which represents the rainbow. The board at the bottom represents the sacred mountains. The strings represent lightning. In this way the child is held close to all things important to the Dine' people.

17. All of these things create spiritual ties between us and the land. That is one of the ways we are known here, by the spiritual beings. We know the spiritual beings at our offering places here, in the springs, rocks, buttes, etc. We cannot make prayers at any spring or rock, only the ones where we know the spiritual beings. These places are sacred to us. We cannot practice our religion anywhere else. For the white man they say he only knows his Creator for one day in the week. For him maybe this is enough. This is not enough for the Dineh. We are in our church every minute that we live or breathe. These things the whites cannot understand.

18. We are familiar with our land. We know where to go and where not to go. There are places where dangerous spirits may exist such as burial sites. Those places must be

avoided and should not be disturbed. If I relocated I might disturb one of these places without knowing it, then I or my family will suffer and die. If this would happen I would not know the plants, the songs, or the spiritual beings inthat land and would not be able to cure us.

19. We also wouldn't be able to make our prayers. There are certain places that are sacred to us, these places have been passed down through the generations. We are familiar with these places, we know the spiritual beings at these places, we know how to use these places, we cannot leave them and go to some foreign land where we are not known. It is only in these places that I know, that I can be heard with my prayer.

20. Our religion is here, on our land, not somewhere else. Big Mountain is a shrine where sacred sacraments are offered from the beginning of time. It is also a place where we gather many of our medicinal herbs. The natural springs on the mountain are also shrines where we offer many corn pollens. We the inhabitants of Big Mountain live this way. Laws have been passed against us, fences are strung around us, our livestock are taken away from us, and yet our expectations of life are different, for we seek harmony and compatibility which is the way of our ancestors.

21. We pray without ceasing for our survival here, not somewhere

else, we have no thought of relocation.

22. The people who have relocated out of their sacred homeland have suffered a great deal, and many have returned to their former homes. This is the path of relocation for those who have consented, but for those who follow the Creator's law and stay on their homeland, they have also suffered a lot because of the threat that someday they will come and remove us from our sacred land. We have also had our lives injured by the government who has stolen our livestock and who tries to make us live in old homes that we can not repair so that the old ones and the children are always sick.

23. If you have knowledge of Navajo sacred way of life, how can you not know what it is to relocate somewhere else. How would one pray to the Creator when you have broken the Creator's law in order to follow the white man's law? Tell them you have our views on your paper.

24. For many years now we have lived under the threat of relocation. Our livestock have been impounded, we cannot build new homes, we feel as if any day they may come and drag us away from our land. I cannot live like this. It's been long enough, the deadline for relocation was in July of 1986, over a year and a half ago. We are still here and will always be here.

25. Life is hard here now that Washington has taken away almost

all of our sheep. Sometimes we think we may not be able to survive because we have so few sheep to eat. But I will never relocate, never abandon my sacred lands.

26. Allow us to live and practice our religion, the ways of our ancestors. I believe what I have said. What I have just told you would not be any different from what the other elders would tell you, for the record these are my thoughts.

27. I tell the young people to persevere, aspire to learn and discipline yourself in the sacred philosophy of our ancestors. In a time when there is more encouragement for the white man's education and employment, I encourage you to persist in your knowledge of the self. This is the Dineh way.

28. Many of our young have pursued white man's education and jobs but struggle endlessly with it. Therefore there are many of our young who are illiterate in our way. We observe these young people, who we are told have been educated, roam aimlessly and seek mischievous activities, abandoning their elders and their parents to struggle with survival.

29. There is a need to evaluate the type of education that is offered the youth and seek alternatives on how to strengthen their moral values.

30. According to our religious philosophy, if the prayers, songs and practice of rituals are observed, these harmful or evil activities would not occur among our youth because the Creator has laid a firm foundation to guide them. These are the lessons that the old ones teach us.

31. All of this Washington is trying to destroy. He takes us away from our land, he destroys our culture and ultimately our people. Our land is our way of life, our religion. It is why we are here, why we live. We will never abandon our sacred land. We have no thoughts of relocation.

Kee Shay
KEE SHAY

Subscribed and sworn to before me
this 20th day of January, 1988.

Betty A. Iso
NOTARY PUBLIC

My commission expires My Commission Expires Oct. ,1991.

I, Betty A. Tso, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Affidavit of Kee Shay to the best of my ability and understanding and that Kee Shay did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

Betty A. Tso
INTERPRETER

Sworn and subscribed to this 20th day of January, 198[illegible].

Lu Brooke Phillips
NORTARY PUBLIC

My commissiom expires My Commission Expires Oct. , 1991.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al.,
Plaintiffs,
-vs-
UNITED STATES OF AMERICA, et al.,
Defendants.

CIV. NO.

AFFIDAVIT OF
ALICE BENALLY

1. My name is Alice Benally. I am 69 years old. I live in a hogan on Big Mountain. I have lived there all my life. I am a member of the Nakai Dine' clan and I was born for Clauscheei clan.

2. According to the stories of our grandfathers and grandmothers, in the beginning a decision was made to have people - people were made by the Holy People. Land was given to these people. It is said that the earth was not in its present form. This is what my grandmother told us.

3. The Holy People got together and decided to have life and they made life and put it on earth. There were many forms of life that preceded each other.

4. The Ancient Ones, the Anasazi, were the first people that originated here. During that time there were many monsters that were killing the people. There was a particular

Monster that used to take people up on top of a rock and eat them there. When you go to this area you used to see a lot of beads scattered about. It's probably all been picked up by the white people. I doubt they are still there.

5. After they were all killed, there was another talk of recreating mankind. It was decided that they all would live in peace and harmony with the animals which would be created for their food.

6. After the second mankind had been created, the monsters showed up again. At that time, the first Woman (Changing Woman or White Shell Woman) had Twins -- one was related to the sun, one was related also to the water. They went to see their father, the Sun, who first gave them a hard time. Finally, he gave them arrows and eagle plumes with which they destroyed the monsters.

7. After the monsters were killed, a new creation of man happened: the Dine and other Indian nations. At that time, the Dineh were given instructions about the four Sacred Mountains and the ceremonial ways, and also about the food that they were to eat.

8. People started multiplying in numbers relying on seeds for their food. There were many plants that grew and people gathered and dried these seeds to survive. This is the way stories were laid down for us about our origin and how we came to where we are today.

9. The four Mountains were placed and also two other

mountains were placed to serve as the doorways of our homeland. The Mountains are Blanca Peak in the east, Mt. Taylor in the south, San Francisco Peak int he west, Hesperus Peak in the north with Huerfano Mountain and Gobernador Knob as the doorways. We were placed in the middle with the mountains as our boundaries. It was decided the Dineh would live inside the boundaries of mountains.

10. The Dineh were told that these mountains were their home, that they represented a hogan and this was the center of their lives in the universe.

11. After all the instructions, the people were given their food -- horses, sheep, deer and other animals native to this land. Then, all the plants were put into the ground. They all have names, they all have songs. Some of them were especially planted for the animals that were put here.

12. People were given instructions for the prayers to the dawn, to particular air that comes at noon from the south, called Nohodad't/ish, and to the last light after the sunset, and then to the darkness. All the prayers that we say, we first direct to the earth, which is our mother, and then to the sky, which is our father, and also to the sun, our father.

13. This is how we were placed here, just like the Creator placed other things on the land. We were not just placed anywhere, we were placed here with a purpose of caretaking this land. That is the Creator's instructions, to stay on our land always, and maintain the natural balance and harmony in the

universe.

14. My ancestors have been in this area since the beginning. They have always remained on and cared for this land according to the Creator's instructions. We have always lived in balance and harmony with Mother Earth.

15. Over there up on the mesas the Hopi people live. We hear Washington say these things. We have always traded with the Hopi and many Dineh have married Hopi people. They are our friends, many Hopi come out to visit us and we visit them. The traditional Dineh and Hopi share many things in common, we both follow our religious teachings which instruct us to live in balance and harmony with the land, not develop or destroy it.

16. The first Dineh people were given those instructions and they have been passed down through the generations. Now I teach the young generation about the Creator's instructions and about our responsibility to stay on our land. For those reasons I or any traditional Dineh who follows the Dine way of life could never abandon our sacred land.

17. Many centuries later, a people came across the ocean, and they said: We shall create Washington. Then they wanted to gain control over people's lives.

18. That is when our prayer ways started to be destroyed, because they were not respected anymore. Very slowly it came from the East to the West, the government enforcing their laws on the Indian people. And today, the forceful punishment is here upon our land. They are passing laws telling us to move

somewhere else. Why do they pass laws that prohibit us from practicing our religion. They go under the label "Washington." These people will destroy all life on the planet.

19. As I said, when the Creator placed us here it was with a purpose. The Creator also gave us a belief system in order to survive, the white man calls it a religion I'm told. Part of our beliefs center around the offering of corn pollen as our way of prayer. We offer corn pollen to many sacred places which have been passed down through the generations.

20. We were given places to make our offerings such as certain special places of beauty, springs and river beds. Places where tall rocks stood was a place where you could also go to make offerings. These things were given to us as places of prayer. This is the way our ancestors instructed us about our origin, that's why this land was given and placed for us.

21. We were given this place to live on and we are never supposed to leave or move from here. Plans are being made to get land for us to move to. We are told to relocate to these areas away from our homeland or our boundaries. We are told that if we ever move away from our boundaries, that would be another turning point for us as Navajos and also this would affect the non-Indians alike. Life is going to end for everyone, this is what happened to the Ancient Ones. Their lives were ended by fire. These were teachings that the Old Ones told us. For these reasons and what we know will come to us, we are afraid to move anywhere.

22. We do not want to leave our homelands. It was given to us to live on and to continue our existence as a people. The land was given to us to continue our prayers and offerings and for life to continue we were placed with our offerings here and want to continue living that way.

23. It is wrong to forcibly move us from our homes. There are some of us who do not wish to leave. Some of the things our elders used to talk about among themselves while we who are now elders were growing up. These teachings were handed to us and we want to hold on to these teachings because these teachings are the foundations of our lives. We depend on these teachings for our livelihood.

24. We want to continue working in our cornfields, we want to continue gathering the pollen from the tassel of the corn, so that we could offer it to the sun with prayers. The sun has a special place in our way of life. It is said that he was given the authority to be our leader. We offer special prayers to the sun acknowledging him as our leader.

25. We are told that the universe also has a prayer, the stars were given positions with prayers. Today we know that the stars are not in the right positions. We noticed this last winter. Because of the uprooting of our lives and livelihood, we know that these were foretold in the stars.

26. The stars were placed to give us signs and we have seen these signs already. This past winter, the stars have not been in their right position. The old people used to be afraid

when the stars got out of position. My father used to say that if certain stars were missing in their patterns, something was going to happen.

27. Even the Morning Star has been out of position lately. There are usually two stars we refer to as Morning Stars. Lately I have seen only one. I don't know where the other one went. Maybe it went off and got lost in the universe.

28. There was also another star that used to be present with the other two. I have not seen that one also. This is our situation today. We are heading towards something dreadful. I feel real strong about this and think this way. If they really drive us off the land, I wonder what the future holds for us.

29. Sometimes I think about the future based on the teachings of our grandparents. What will happen if we are forcibly removed. I think about what my elders used to say. I think and worry about it and have fear in myself. I think about my grandchildren, the ones that are now growing and for my unborn grandchildren and I am afraid for them.

30. The law in Washington has disrupted my life, my children and grandchildren's lives. The law they imposed on us is very inhuman. I think about how our lives will be if they win and we lose this struggle.

31. The way I see it now our situation is not good at all. We have no chance at all right now. They even know we are in a bad situation so they are trying hard to remove us from the

land. But for me I do not wish to comply with the law because I know what is going to happen according to the stories and therefore I am afraid to move.

32. I have no plans to go anywhere. I don't plan on moving any place that is not my land. I don't sit around and make plans like that. I don't have plans to move into a house and live in a house, because houses were not meant for us. It was made and given to the white people.

33. There is even a story that goes with the white people's houses. We were given hogans to live in and should remain like that. The Blessingway Ceremony instructs us how to build, live, and pray in a hogan. I will always stay in my hogan. They say that when everyone has moved into houses, and no longer use their traditional dwellings, that's when all the good things in life will end. When all of our traditional ways have been taken from us, that's going to be the end of our lives.

34. A white man's eyes look on the earth only as money. In the eyes of an Indian man, the earth is holy.

35. The different mountain ranges across the land, the government feels that he owns every tree of these mountains. Every tree is another dollar sign.

36. To us, it is not that way. You cannot break off a branch of a tree without permission. The earth is not for sale.

37. We are related to the land, the earth is our mother. We are known by our land here, and the land knows us. We know where to go to make offerings and gather plants for

ceremonies and where not to go so to avoid bad spirits. Our life is here, our religion is here not somewhere else.

38. When we make prayers and offerings we pray to the spiritual beings. The spiritual beings know us so they communicate our prayers to the Holy People. That is why our prayers work, we are known by the spiritual beings.

39. We do not know the spiritual beings elsewhere only here. That is why we must stay here. The spiritual beings are introduced to you in the very beginning of your life.

40. When your mother is pregnant she may have a Blessingway Ceremony so that she will have an easy child birth and that the child is born in good health. During the ceremony prayers are made to the spiritual beings for the child. In that way the relationship with the person and the spiritual being begins before birth.

41. You also offer the Placenta to a young tree. You wrap it in something and you take it and make an offering of corn pollen and place it within the tree. You pray asking for a good life. If it was a girl's placenta, then you would pray that the baby girl would grow up to become a weaver and a good corn grinder.

42. The same thing was done for the boys. You pray for a good life and that he would have livestock and be a good supporter.

43. The male placenta was offered back to the cedar tree, the female placenta was offered back to the pinon tree,

because we believe the pinon tree is a female.

44. We also offer the afterbirth to a tree which creates a life long bond between the person and that tree. You must see that no harm comes to that tree because if it does it may endanger you. In that way you are also introduced to the spiritual beings of the area. Prayers are continually made for the child through the spiritual beings to the Holy People for the health and welfare of the child.

45. When a baby is born, the Holy People give it speech and thought. Life is also given to this baby when it is born. A baby is a gift from the Holy People.

46. When a baby is born, whether it is a boy or girl, prayers are offered for the roles that they will have. For the livelihood they will have as a young boy or girl. The Holy People receive these prayers.

47. All of our prayers and offerings can only be made at particular places where it is possible to communicate with the Holy People. These sites are sacred. We cannot bring them with us if we move. That is why we must stay here where our offering places are.

48. We make offering to many different types of places such as buttes, mountains, rocks, hills, flat areas, springs, etc. But we cannot substitute any rock for the rock formations that are sacred to us, we cannot substitute any butte for our sacred buttes. Only at the places where we know the spiritual beings and only places where certain conditions occur where it is

possible to communicate with the Holy People can we practice our religion

49. Here on our land we know the spiritual beings. Here on our land we know where the special conditions occur such as rocks that talk back to you.

50. This grass right here, when it grows in a ring, that is where we offer. We also offer to a certain formation of rocks -- Tsennadjinn or "Talking Rocks." Also to the open land. But not just any open land, grass in a ring, etc., but where we know the spiritual beings and where the conditions are right and the Holy People will hear our prayers.

51. The north point of Big Mountain is a main offering place. Long, long ago there was a hogan there. Some anthropologists dug into it a couple of years ago. Some of our own people must have shown them. We are not all the same in our heads. Some only think of Washington.

52. This is the way the Creator instructed us. Every day you make offerings upon her, in the morning, afternoon, and in the evening. Any time you feel troubled about something, you make an offering and pray about it.

53. The Little Colorado River we believe is a woman, it's a place for offerings. Before you cross that river you make an offering then you pass over and proceed on your way. Every offering place has a name, you call upon their names when you make offerings. Even the rivers that overlap each other by Grand Canyon has a name. The one on top is a male river, the one on

the bottom is a female river. When you go there you can also see a rainbow above the rivers. We make offerings in many distant places. We believe in these sacred offering places.

54. We make offerings to certain mountains also. They are Holy places placed by the Holy People. We believe in these places, therefore we pray at all these places. We just don't pray to one place. There are many places at which we make offerings. Even right around here there are many places to go to make an offering and pray.

55. These places are sacred to me, it is here where I can communicate with the Holy People, not somewhere else. These places were placed here for us by the Holy People.

56. If we are to make our offerings at a new place, the spiritual beings would not know us. We would not know the mountains or the significance of them. We would not know the land and the land would not know us. It would not be the same as our own homeland. We would not know the sacred places, we would not know the names of these places. If we were to go on top of an unfamiliar mountain we would not know the life forms that dwell there. It would be a strange place for us.

57. I visit the sacred sites on my land on a regular basis. Each site has a purpose and I pray there or make the appropriate offerings depending upon the situation. Some types of offerings we make several times a day such as offering corn pollen at dawn, noon, and at dusk outside my hogan. I make these offerings every single day. How could I live somewhere else and

still make my offerings three times a day at my hogan. I must make these offerings outside my hogan, so how can I move somewhere else.

58. I make offerings at the other places I mentioned before too. I cannot tell you where these places are because that is sacred knowledge. But these places are sacred to me, I cannot practice my religion anywhere else. Some places such as the spring or rock altar near my hogan I go to and pray or make offerings for my children, I go there very often. Other places I pray for my livestock, etc.

59. All of these places were given to us for a purpose. I visit these places and pray there on a regular basis. You cannot take these places away from me or me away from these places. I do not take the white man away from his religion.

60. This law that was imposed on us had a great impact on the elderly women like me. We suffer from all kinds of ailments. We ache all over and we do not have strength because we think about what's being imposed on us all the time. It's our daily thoughts and making us sick.

61. It is a hardship for us and not good for us. Plans of removal are being talked about without consenting us.

62. This law that was imposed on us, we can pray about it as something we just imagined or maybe it was just a mirage. Something we thought we saw or something that's not realistic. We can make offerings in this way. Offerings are made so that bad dreams will not happen.

63. If you dreamed that one of your relatives had died, you pray for that person to live to reach old age. You pray so it wouldn't happen. If you imagined something, you can also make offerings.

64. There are many spiritual beings you can make offerings to. You can never tell all about it. There are many ways to make offerings for various reasons. This is the way we were told and we tell about these things in the same manner.

65. The Earth was made our Mother, therefore you can make offerings to her to pray for yourself. The four mountains that I mentioned was originally placed in the form of a hogan. The four main poles were positioned in the same way the mountains were made. The two doorway poles were also placed as the two mountains that make up the doorway. We were placed inside here to live.

66. Sometimes I lay awake at night thinking this way. I think about this so called Washington. What kind of being is it. This Washington is very tricky and manipulative. What kind of being is this Washington, always making plans that are inhuman for us. He just plans and plans without thinking that we are human beings and that we are alive.

67. Washington has come and taken away all our sheep. Washington doesn't let our children build new homes. Washington doesn't have any heat. Do they realize the problems these programs cause, how these things affect us? How can we survive without our sheep? I used to have hundreds of sheep, now I have

so few. How can I survive, what are we supposed to eat?

68. We survive on our livestock. Now that Washington has impounded most of our livestock, I wonder if we can survive. Maybe that's what Washington is truing to do, kill us, or starve us off of our land. This is the same thing that my grandmother used to talk about when she told me stories about Kit Carson and the Long Walk. She said Kit Carson killed our livestock and forced the people into surrendering into captivity. That is how I see it now. They took away my grandparents means of survival and forced them to surrender, some hid out, but most people were captured. The livestock impoundment is trying to force the same thing upon us. They take away our means of survival and force us to do what we don't want to. This land is sacred to me. I can never leave my land. Why is Washington tying to starve me off my land.

69. Our Mother Earth, her inner being, the way she is dressed is of coal, gold, silver, and uranium. She was dressed in all these precious minerals when she was created. She was given and blessed with the beginnings of life.

70. Upon her, life was to continue in many forms for generations and generations. Today you see mining of various forms digging and taking out minerals from within her body. When they have taken every ounce of minerals from within her, maybe she will just shrink.

71. The minerals in her body is what she is made of and it gives her life. The coal is her liver, every mineral was

given a place in her body as part of her organs. The earth was made just like us with a heart, liver, stomach and intestines. We were created like her. She is our mother.

72. This is what our grandfathers and grandmothers taught us while we were growing up. They said that if there was ever a time in our future when we were to experience these things, it would not be good. What they talked about we are experiencing today.

73. We would as a people become weak. You hear about this every day. People are giving up. I think today we are heading for and dealing with events that our elders talked about. They are happening now, I see it every day.

74. The white people want to be the only ones to live on this earth and own it. They want to dig into her and destroy her. The white people work daily to implement this plan of destruction. He keeps digging, digging. I wonder when he's going to completely destroy her.

75. The things that we respect are being destroyed by the mining and drilling. All the things that they dig out, are part of the earth. And our religion is connected to these things.

76. After they dig out all these things the earth will collapse. It is like your own body, if somebody would take out your heart, your lungs, your stomach. The same will happen to the land. It will collapse into nothing but water. That is what they are digging for.

77. Today, Washington is in charge of everything and does not respect our ways. Whenever people talk about their rights, they get punished. Police is sent after them. All the native people are oppressed. I wish we could all get together and write a paper about it. We do not have a word for relocation. It means that a person dies and is never seen again.

78. Maybe the only way that our prayers will be strong again is to send Washington back to where they came from, back across the ocean. They are even messing with some of the most sacred things such as lightning. They make electricity. In every home around the country there is a lightning system now, lighting up white people's homes. Even little toys run on electricity. What I believe is that even lightning is their slave now. But I do believe strongly that one day the natural powers will be strong again.

79. What all the so-called leaders are looking for is to starve us out. Today, the forceful punishment is here upon Dinetah. They treat us like little children who don't behave themselves. A lot of people who are treated that way have white hair. Our Elders are not respected anymore.

80. I hear that they are going to have armed police drive us out of our land. I don't even know where they are going to take us. I hear this every day and today. There's no doubt that that's what is going to happen. When they'll take us, I don't know.

81. The government is violating our religious ways,

where our offering places used to be. They are trying to take our religion away from us. Everything we do comes with a song and a prayer. Washington can never take that away from us, no matter what they try. We will resist to the very end and defend our sacred land, preserve our religion. In the Dineh way, everything comes with a song and a prayer.

XALICE R Benally
ALICE BENALLY

Subscribed and sworn to before me
this 20th day of January, 1988.

Betty A. Iso
NOTARY PUBLIC

My commission expires My Commission Expires Oct. , 1991 .

I, Betty A. Tso, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Affidavit of Alice Benally to the best of my ability and understanding and that Alice Benally did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

Betty A. Tso
INTERPRETER

Sworn and subscribed to this 20th day of January, 1983.

Lee Brooke Phillips
NORTARY PUBLIC

My commissiom expires My Commission Expires Oct. ,1991.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al.,)
)
Plaintiffs,) CIVIL No.
)
-vs-)
)
UNITED STATES OF AMERICA, et al.,) AFFIDAVIT OF
) MARK CHARLEY
Defendants.)
)
)

STATE OF ARIZONA)
) ss:
COUNTY OF NAVAJO)

1. I am 79 years old, and a Dineh Hataalii, a ceremonial practitioner. I live about 2 miles north of Teesto Chapter. My family has been living in this area for many, many generations. My ancestors lived here before the Long Walk of 1868, before the creation of Washington and the coming of the white man. We have always been here.

2. At the age of sixteen, I started learning to be a medicineman. I grew up among medicinemen. My grandfather (maternal) and my father were medicine men, so I started my apprenticeship as a medicineman at a young age.

3. I completed my training when I was around 26 years of age. I was told that I was now ready to start practicing what I had learned.

4. That is the Dineh way. We do not have official

schools where we teach the Dineh way of life or religion. Becoming a Dineh medicineman is a long process. There are many many ceremonies, each one takes a long time to learn and memorize. Each medicineman knows just a few of the many ceremonies.

5. I have practiced our ceremonies for the past 67 years. My father taught me the Bee shee (Flint Way), a healing ceremony, and I learned Tl'ee'ji (Night Chant) from my spouse's family. The ceremonial paraphernalia, which I use were prepared through major ceremonies. These ceremonies can only be performed in our sacred homeland.

6. The former Dineh ceremonial practitioners instructed me during my apprenticeship to conduct our traditional ceremonies. The Dine's sacred aboriginal homeland is delineated by the Sacred Rivers. To the east is (Rio Grande River) and the south is Little Colorado River, a tributary of the Colorado River. To the west and north are Tooh (San Juan) which flows into To nits'osikooh (Colorado River). Every Dineh individual has to make a corn pollen offering, before crossing these sacred rivers.

7. Our sacred homeland is also delineated by the four sacred mountains which represent the four posts of the hogan where we conduct our ceremonies. There are two other sacred mountains which represent the two door posts to the hogan.

8. I was instructed to take on the role of a healer with a medicine bundle. Where ever I go among the Dineh people, the elderly, the young people and the children and who ever

needed my services for as long as I was permitted to live, I was to stand between my people and whatever harm that would threaten them. I was instructed that I would heal people that were severely ill. The power of healing was put into my medicine and I was carefully instructed on how to use it.

9. This is my responsibility now, to help my people, to restore the natural balance and harmony within each individual. I have dedicated my life to this purpose and must continue as long as I am living.

10. Being a medicineman is an honor but it carries certain sacred responsibilities that must be respected. I have been taught sacred things, special knowledge that only medicinemen know. Some of those things cannot be shared with non-Dineh people, but I will tell you something in order for you to understand some things about the Dineh way.

11. Many things about the Dineh way are different than white man's religion so I will try to explain some things about our way. I mentioned earlier that we do not have official religious schools or written books that contain our religion, we have our oral tradition. Our traditions are taught and passed down orally through the generations.

12. The white man can practice his religion anywhere, he builds his churches or temples wherever and whenever he wants, and prays to the Creator. We too pray to the Creator, but not in some buildings but on our land in our sacred homeland. Your temples and churches have no significance to the Dineh.

13. We have been instructed by our Creator on how we

were placed here, and how this land in sacred and that it's our responsibility to caretake the land. The Creator gave us special prayers, offerings, and ceremonies in order to keep the natural balance and harmony. The Creator also gave us the Blessingway Ceremony which instructs us how to build a hogan, how the four posts represent the four sacred mountains, the two door posts represent the other two sacred mountains, how the ground is our Mother Earth, and the roof is Father Sky.

14. The Blessingway Ceremony teaches how to pray for the good things in life and for health and prosperity. We are also taught how we can only perform ceremonies in our hogan on our sacred land. The hogan is like your church or temple, because that is where we make our prayers and hold our ceremonies. But our hogan is also different because we cannot just build a hogan anywhere like the white man's religion.

15. Hogans can only be built within the four sacred mountains which define the sacred homeland. Another difference between the Dineh people's hogans and the white man's churches or temples is that each individual has a special sacred bond with both the hogan and the land where he or she is from.

16. The white man can pray in any church or temple of his denomination. But we Dineh are not like that. A ceremony will only be effective if performed in a hogan in your home area. When you have a ceremony, you pray to the spiritual beings and they communicate the prayers to the Holy People. If you tried to perform a ceremony in a foreign land, the spiritual beings wouldn't know you and the ceremony would be ineffective.

17. My ancestors were born here, I was born here, my children were born here. They were not born in the hospital. We have eight children, five of them men and three women. My children are known by the spiritual beings here, just as I am and my wife, my whole family. That is why we perform ceremonies here for our family, if we performed a ceremony in a foreign area it would not help.

18. We cannot learn about the spiritual beings elsewhere, it is here our umbilical cords are buried, it is here the afterbirth was offered, it is here that we used a tree to build cradleboards, all of these things form a spiritual bond with our land and introduce us to the spiritual beings. You never forget the places that these things happened, these are sacred sites to you. You can never move your umbilical cord once it is buried, it stays there forever and you must make sure that nothing happens to that area.

19. When a cord is placed, a bond has been made between the baby and the land, that's what they say according to the stories that was handed to me.

20. A person may build his home near a place where his umbilical cord has been placed. Boy cords were placed where there were horses. This was done so they could develop an interest in raising horses. A girl's umbilical cord was sometimes placed in a sheep corral. This was done to insure that the girl would always have a good livelihood based on her sheep.

21. Things would not be the same when you perform a ceremony away from where your umbilical cord, placenta, or where

your cradleboard was offered back to the land. You would not have any kind of connection to the new area you moved onto. You should not forget where your umbilical cord was buried nor should you try to remove it to a new location. That cord is your thought, planning, and your livelihood. These were teachings that the old ones used to teach us to carry on, to build a life on these spiritual teachings.

22. People come to me and ask me to perform a ceremony for them that I know or make offerings for them. Most Dineh people know certain prayers and offerings but sometimes they need someone with special knowledge, like a medicineman to help them.

23. For many of the ceremonies that I know how to perform I need to gather medicinal herbs from this area near my home. I can only gather herbs from sacred areas such as Talahogan which is mentioned in the legends.

24. If you gather the same type of plant from a strange area it would be of no use. You don't just go and pick the herb and then use it whenever you need it. The medicinal qualities of the herbs only work if you follow the sacred Dineh way.

25. You never can gather plants in advance. When it is determined that you need a particular plant you go to the appropriate area to gather it. I can only gather the plants in special areas where I have been taught how to invoke the healing qualities by addressing the spiritual beings in the plant. If I went to a strange area I wouldn't know the proper names and prayers for the area and I wouldn't be able to invoke the special

healing qualities of the plant.

26. When you gather plants a special prayer offering accompanied by corn pollen or chips of precious stones are offered to the selected plant. By making the appropriate prayers and offerings for that particular herb and area, you invoke the healing qualities of the herbs. You tell it about the person who is sick and why you need to gather the herbs. You never gather herbs in advance, only when needed, and you only gather as much as needed for that time. Then, the herbs surrounding the blessed herbs are gathered for the ceremonial purposes. For example, when a person comes to me for a quick recovery for an injury, I need to gather the appropriate plants for the Flint Way. There is a special place where I need to go where I have the knowledge and powers to make the plants cure people.

27. The sacred sites, whether they are herb gathering areas or offering sites, all have designated names. When you make offerings you must know the place, it's Holy name, the origin of the place. If you did not know these things and did not properly address the offering place, your offering would not work.

28. When you place an offering, you should watch over it for four days. After four days is up the prayers you placed with your offerings start to work for you. When your offering is destroyed by a bad person within the four days, it is not good for you.

29. If the offering is destroyed after four days, then whoever is doing evil against you will suffer for it. It is

always important to watch over your offerings the first four days. This is the way our Creator planned our lives for us. These are some of the things the old people taught us.

30. Our ancestors have also taught us that water is life. We use it for cooking, drinking and it sustains us and gives life to us. We make offerings to water so it can protect us. There are certain sacred springs near my home where I make offerings. At these springs I pray for my family, for my children so that they will be safe and in good health. The prayers work there because I know the spiritual beings there, the origin of the spring and its holy Dineh name. It's the same way with all the offering places near my home. That is why the prayers work. I cannot make offerings in a strange place for myself, my family, or people who need a medicineman.

31. Among the cedar trees over yonder, there is an opening in the earth. It is the home of the Wind, this is where I also make my offerings. I also go to the mountain tops over there where lightning has struck to make offerings to the places where lightning has hit the ground. I also make offerings to a special place near here where the rocks talk back to you, called Talking Rocks. I make offerings to Mother Earth where I find beauty.

32. Offerings are offered as prayers for just about anything. However, we can only make these offerings at special sacred sites where it is possible to communicate with the Holy People. It is not just any place of beauty anywhere on this earth, or any spring, only certain places that have been passed

down through the generations and where you are familiar with the spiritual beings.

33. Washington tells us we have to move to some foreign land. They do not understand why we refuse to comply with their law and must follow the higher spiritual laws of our Creator. Washington only knows the white man and his ways. I do not see red men in Washington, only the white man. As a result Washington treats everyone the same, like a white man. But we Dineh are different, we were placed here by the Creator, we must stay here according to the Creator's instructions and caretake the land. The Creator gave us offering places on this land, we are known by the spiritual beings here on this land.

34. We, the Dineh, are different than the white man, our religion is here on this land. The white man can practice his religion anywhere, so for him to move from one place to another does not disrupt his religion. Our religion is tied to our land, if you take us away from our land, you take away our religion. The white man doesn't understand our ways, that's why he should not interfere with our natural laws, the Creator's laws.

35. The Dinehs' sacred homeland consists of Sacred Mountains, Springs, Rivers, animal and vegetable kingdoms. Each have their special offering. Their sacredness was set forth by spiritual prayers and songs, which are preserved within our traditional legends. I cannot abandon them, that is why I cannot relocate.

36. We have always lived here. We know where to go to

make our offerings. For as long as I can remember these offering places have been here. From generation to generation, my ancestors have made offerings at these places. Our prayers go deep into our Mother Earth. We cannot just pick up our things and forget about our sacred places. I am a medicineman. I need this land here me to practice my religion and but to help people and cure people.

37. This medicine has taken me a long way and I have helped many people with it. I have used my medicine on people from all over this area. Many people could not be cured by the white man's medicine, so they traveled to my home and I performed ceremonies for them. They got well.

38. I have a responsibility to stay here and to continue making prayers, offerings and ceremonies for my people. The teachings and instructions that were taught to me would be of no use elsewhere. I wouldn't know where to make offerings, or how to properly address the sacred places, how would I call to the plants to invoke their healing powers. I wouldn't know the names of the places or the origins of the places. It is here where I know the land, it is here where I have special powers to heal people. I would be of no use elsewhere. The land is my altar, the land and all the things that the Creator placed here with are my tools to cure people. I would be of no use in a foreign land where I wasn't familiar with the land. If you took away the tools and the medicine from a white man's doctor, he would be of no use to help people. If you take me away from my land, you would be doing the same thing to me.

39. I will take care of the land given to me by my parents until I go of old age. I will always pray here for my family and others who need my assistance. That is what I've been taught by my parents and my grandparents is the Creator's law. I will never leave.

Mark Charley
MARK CHARLEY

Subscribed and sworn to before me
this 20th day of January, 1988.

Betty A. Iso
NOTARY PUBLIC

My commission expires My Commission Expires Oct. ,1991.

I, Betty A. Tso, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Affidavit of Mark Charley to the best of my ability and understanding and that Mark Charley did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

Betty A. Tso
INTERPRETER

Sworn and subscribed to this 20th day of January, 1987.

Lee Brooke Phillips
NORTARY PUBLIC

My commissiom expires My Commission Expires Oct. ,1991.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al.,)
Plaintiffs,) CIV. NO.
-vs-) AFFIDAVIT OF VIOLET ASHKIE
UNITED STATES OF AMERICA, et al.,)
Defendants,)

STATE OF ARIZONA)
) ss:
COUNTY OF COCONINO)

Violet Ashkie, being duly sworn, deposes and says:

(1) I am from the Big Mountain area. I was born and raised there. I am 74 years old. My clans: I am born into the Giant-Red-Running-Into-The-Water People and related to the Bitter-Water clan. My maternal grandparent clan is Reed People, and my paternal grandparent clan is Many-goat clan.

(2) From the beginning of time, our ancestors were instructed to live according to the great Creator's instruction which is based on our traditional ceremonies. My ancestors have been here on this land a long time. I can count over ten generations of women from my family on this land. Some of my ancestors were taken on the Long Walk to Ft. Sumner, New

Mexico in 1868. After the Long Walk they came back to the same area where they had always lived. We have been here a long time and will always remain here because here is where we know the land and can practice our religion.

(3) The Dineh were placed in between the four sacred mountains and 2 sacred rivers. My ancestors were placed here. This was done a long time ago after several prior worlds. The Creator put everything here that exists, the animal and vegetation kingdom, etc. Then the Creator placed my ancestors here to caretake the area and to keep the spirituality in harmony and balance with Mother Earth according to the Creator's plan.

(4) This is my responsibility to the Creator. My ancestors were the original caretakers of this land, now it is my turn, then it will be up to our young generations to preserve and carry on the original instruction of the Creator's law. I cannot defy the Creator's law, that is the highest law I know. That is why I cannot relocate.

(5) As I said before, the Dineh were placed between the four sacred mountains. Our religious teachings instruct us to always live within the four sacred mountains. These special mountains define the sacred Dineh homeland and represent our spiritual ties to our guardians within the sacred

directions. Each clan originated in certain areas within our sacred homeland as caretaker of our ancestral land. But each family was placed in a certain area within our sacred homeland as caretakers of that land.

(6) We must stay on our land and keep the balance according to the Creator's plan. According to the religious instructions given to the Dineh, everything is alive and has a purpose in life. Each animal, cloud, rock, hill, butte, etc. is alive and has a spirit and was placed there by the Creator. Everything has a place and a purpose within the Creator's divine orderly plan.

(7) However, sometimes we see signs from Mother Earth that something is out of balance, or we can tell because we suffer a severe drought or something. When we see the imbalance or loss of harmony, then we have to restore the balance or harmony by making the certain special offerings or performing certain ceremonies.

(8) The offerings or ceremonies must be done at special places where it is possible to communicate with the Creator. These sites have been passed down to me through my oral teachings from my ancestors. The location of the site is sacred to me and I cannot share it with you. If I did, you would also have the responsibility of caretaking the land but you would

not know the appropriate way of doing so.

(9) My grandparents were told where these sacred sites in the Big Mountain area were by their grandparents, these teachings were passed on to me when I was young. When Washington tells me to relocate, they do not understand what it means to uproot a Dineh person from their ancestral homeland. The white man moves about the earth freely, he does not treat Mother Earth as a living being, but exploits its natural resources. We are related to Mother Earth and all things. We cannot move and abandon our homeland and all our relatives. We are not like the White people.

(10) Not only must we stay because that is our religious instructions from the Creator, but if we abandon our land, who will return the balance and harmony to the earth when it is necessary. If we are not there, everything will fall more and more out of balance and our religious prophecies teach us that very bad things will happen and the world may end.

(11) Just as nature is normally in balance but sometimes falls out of balance and needs offerings or ceremonies to restore the balance, sometimes the Dineh people lose their natural balance and harmony with the Creator and Mother Earth by coming into contact with dangerous powers such as lightening

or burial sites. If that happens, the person will become sick and will need an offering or ceremony to restore the balance and harmony. In this way the sick person will be realigned with the spirituality of the Creator. There are certain curing ceremonies that we perform depending on the imbalance in the individual.

(12) For example, if someone is affected by a non-Navajo evil spirit, they will have an Enemy Way ceremony for protection and to restore the balance and harmony in the individual. These ceremonies can only be performed in a hogan on the land where you are from and know the spiritual beings.

(13) That is also why we must stay on our land. We are familiar with the land here, we know where to go and where not to go. If we were removed from our land and taken somewhere else, how would we know where not to go? There may be old burial sites and other places that are taboo and we would unknowingly go there. Then we would get sick but we wouldn't know why.

(14) Also once we got sick there would be no way to heal the sickness on that foreign land. We would not know the spiritual beings in that land, they would be alien to us and they would not answer our prayers. We could not protect ourselves from the sicknesses and we would die.

(15) If you force us to go elsewhere we would get sick and we couldn't heal ourselves, we would not survive. You would be sentencing us to die. That is how I see it. Is that what Washington is trying to do?

(16) When you remove us away from our land, you take away our religion, our way of life. We cannot practice our religion anywhere else, only at our birthplace where we know the spiritual beings. If you force us to leave we cannot take our land and our sacred places with us. We can not take the spiritual beings that we know in this land with us. We would have to leave our spiritual ties with the land behind, our religion, that is why I cannot comply with the relocation law.

(17) How can we live where we do not know the spiritual beings? How can we live where the spiritual beings do not know us? This is central to our religion, the spiritual beings communicate our prayers to the Holy People. If you do not know them, it does not work.

(18) There are certain things we do to introduce a Dineh person to the spiritual beings of our home area. This is not something that we can do in a foreign place, we can only do it at home where we know the spiritual beings and they know

us.

(19) The relationship between the person and the spiritual beings begins even before the person is born and continues throughout the life of the person.

(20) When a woman is pregnant, usually a ceremony will be done for her and the unborn child. The ceremony is done, so the mother will have an easy child birth, and the child will come out in good health. With songs and prayers of the Blessingway ceremony being done for both of them, even before the child is born, the connection to the land and the spiritual beings has already begun.

(21) When the child is born, the afterbirth is offered back to a young tree. This is another way we introduce the child to the spiritual beings of the area and the spiritual beings to the child. From that day on the child will have a sacred bond with that tree and its environment. And the umbilical cord is buried on the land. The mother will decide where to bury the child's umbilical cord. The umbilical cord may be buried in the livestock corral, a corn field, or if the child is a female, then her umbilical cord may be buried by the weaving loom. This is done so the child may grow up and make its living by the livestock, gardening, or weaving. Through the burying of the umbilical cord the child is also

introduced to the spiritual beings of the area.

(22) When I started having my children, I was taught how to make a cradleboard. You have to make it from a tall and straight tree near your home. Before you can cut the tree, you make an offering of corn pollen to the tree. A tall and straight tree is used because in the future the child will grow up with a good mind and will be able to care for him/herself.

(23) The cradleboard must be made in one day. You make an offering of corn pollen to the tree in the morning. The cradleboard has its own sacred songs and prayers. Then you split the log in the middle, these two boards become the two bottom pieces. You have to finish the cradleboard within that one day. After the cradleboard is done and put together, then you make an offering of corn pollen to the cradleboard and put red ochre on the cradleboard. Then the child is placed in the cradleboard.

(24) Each different part of the cradleboard represents different things in the creation and the spiritual beings. The two boards on the bottom represent the mother-earth and father-sky. The foot board is the sacred mountains. The headboard is the rainbow, and the strings in the middle represent lightning.

(25) All of these things, the ceremony for the baby before birth, the offering of the afterbirth, the burying of the umbilical cord, the making of a cradleboard, all of these things introduce the child to the land, to the spiritual beings of the land. This knowledge belongs to the Dineh and creates a sacred bond between us and the land which is the foundation of the Dineh way of life or religion.

(26) Because of this special relationship between the child and the spiritual beings of that area, the child is able to communicate through prayers and offerings to the Holy People. The prayers and offerings would not work if you did not know the spiritual beings and they did not know you. If you tried to forcibly remove us, there would be no point in making prayers, offerings, or ceremonies. It would be like a non-Dineh person trying to pray out here where he didn't know the spiritual beings.

(27) The land here is my altar, my place of worship. I cannot go elsewhere to practice my religion. Going to a foreign area to pray would be of no use, it would be like trying to pray in a white man's church.

(28) Here on the land I am known by the spiritual beings, and I have known them since my birth. I know the rocks, buttes, springs, and other offering places. All of these places are

sacred to me, they are my places of prayer. These are the places where I can communicate and address the Holy People, not somewhere else.

(29) We have offering places on our land. My grandparents taught me about these places, the knowledge about these places has been passed down through the generations. Only at these places where I have been taught it is possible to communicate my prayers to the Holy People and where I know the spiritual beings can I practice my religion.

(30) These places are sacred to me, I make offerings at these places all the time. I cannot leave my offer places behind.

(31) One of the places we make offerings at is Big Mountain. We pray for different things like for our livestock to have good health. We make offerings there on a regular basis. My parents and grandparents made prayers and offerings there before me and now my children go there to pray.

(32) We make our offerings on the Big Mountain, in the east the white shell is placed, with corn pollens and other different types of pollens as well. In all four directions, it is done in the same way. It cannot be done another way.

(33) On Big Mountain, there are sacred springs in all four

directions. We make offerings to the springs when we need rains, we do this in the same way as our forefathers have done their offerings and ceremonies. We use Big Mountain in many ways, through our offerings and ceremonies.

(34) This is what I was taught by my grandfather and grandmother. They have taught me the religious teachings, by what their grandparents have taught them. As I was growing up, I also learned by watching ceremonies being conducted on Big Mountain. Not only one family did the ceremonies, but all others who lived in the area also came to help and participate. The people in this area are not the only ones who use the mountain, also those from many different areas. But my family lived close to the mountain.

(35) We always make our offerings when the seasons change. As we have always done in the past, we realigned ourselves with the spiritual beings and live in harmony with the earth.

(36) There is a small mound not too far from the Big Mountain. We have been taught that the earth is our mother and the sun is our father, on that mound we make our offerings to the sun. Then there is a place called "the piles of rock." There we make our offerings for the good things in life. I go to these offering places whenever I am going to travel far away from my home. Sometimes I go there several times

in a week.

(37) There are places on Big Mountain, where there are natural springs, with the water coming out in all four directions. The water never dries up there so in the summer when there is a shortage of water, a lot of livestock use the springs as a source of water. We also use the springs for our drinking water. These places are sacred to us. Because we hold these places sacred and still honor them, and have continued to do our ceremonies, we have survived for many generations. Because of these things, we can not leave these sacred places, which bind us to the land.

(38) I make offerings to the spiritual beings of these springs every few days. The water is sacred, it represents the Mother of all life. I pray there for my children, for protection, and for the good things to sustain our livlihood. If we lose these things it would cause us to lose our spiritual strength and sickness would overcome us mentally and physically.

(39) I still continue to do the ceremonies, which have been passed on to me. It is my responsibility to carry on these things and pass them on to the next generation. Because, of these sacred places, I cannot relocate and abandon my natural birthrights. These things were placed here by the

great creator. For us this is something that you cannot forget or ignore. To me these things are sacred. We cannot survive without them.

(40) The medicine herbs that are used in the ceremonies are found in the area. We use the medicine herbs in every one of our ceremonies, such as Blessing Way, Yei-bi-chii, and others. There are also medicine plants for injuries too. There are many different types of medicine herbs which are found on Big Mountain. For example, for the curing medicinal herbs, we always make an offering to them, before they are gathered. The medicine herbs only will work for you if you are known by the spiritual beings of the area. If we were relocated and had to gather herbs in a foreign place, it would be of no use.

(41) We make offerings for our livestock and the animal beings so they will have plenty of nourishment and provide healthy food, we also make offerings for them. We usually make our offerings on the east side of the Big Mountain.

(42) I have a corn field on the west side of my home. I was taught as a child, to plant our corn field. The corn fields are sacred to us because they give us food and the corn pollen. And a lot of our sacred songs and prayers come from the corn fields.

(43) From the corn field, we get our corn pollen, which is used in all ceremonies and offerings. The white and yellow corns are taken when harvested, then ground into corn meals. They are used in the ceremonies and offering at dawn and in the evenings.

(44) Every morning at dawn, the first thing I do is make offerings with white corn meal. My offerings only work because I know the spiritual beings here and they know me. I do this every day, not just when I feel like it. How can I live elsewhere and still make my offerings everyday on my sacred homeland where I am known by the spiritual beings.

(45) Whenever and wherever lightning has struck a tree, that place is used in certain ceremonies, too. We also gather the plants around the tree after the appropriate offering has been conducted. We use many plants in our ceremonies and not just one plant is considered sacred. It is here, nowhere else that we know the spiritual people and can perform the ceremonies with the things the Creator has given us. That is why we must stay.

(46) I have told you about many different types of prayers which are connected to specific places in the area where I live. The hogan is used in many different ways, too. Our

ceremonies are done in the hogan. The hogan is made up of logs and dirts and it has a dirt floor. The hogan was given to the Dineh people by the Creator. There are religious instructions on how to build a hogan.

(47) The male hogan, which is the shape of a cone was first created. Then the female hogan, which is the shape of a dome, was created. According to our teachings, the four main posts of the hogan represent the four sacred montains, and the door way posts represent the two other sacred mountains.

(48) In the male hogan, the ceremonies were created. The four sacred mountains in the east Blanca Peak, in the south Mt. Taylor, in the west the San Francisco Peak, in the north La Plata Mountain. From the east, the two doorway posts are Governador Knob and Huerfano Mountain.

(49) The poles from the east and west are fastened together, the poles from the south and north are fastened together. In the same ways, our songs and prayers are conducted. In the same way, we also make our offerings.

(50) In the east Blanca Peak, we called it the Strength of the White Shells, in the south Mt. Taylor, the turquoise stone is placed. In other west San Francisco Peak, the Abalone

Shell is placed, and in the north La Plata Mountain, Jet is placed. And the two doorway posts, Governador Knob (Ch'oelii) and Huffano Mountain (Dzitnaoodnilii), from here different types of pollen are placed.

(51) The hogan has its own sacred songs and prayers, it is all part of the Blessingway ceremony. The earth, the offerings, and all the things that I have mentioned are in the hogan's songs and prayers. When we do our ceremony in the hogan, to us, it is the most sacred place.

(52) Our hogan is our home, our place to do our ceremonies. This is where we were taught of the instruction that was set forth by the Holy People. We can only do our ceremonies in the hogan. It is a part of us, we can not just abandon our hogan.

(53) Our prayers go down deep in the Earth of our hogan. There are generations of prayers, our hogan is blessed by the generations. There are sacred ceremonies that have been performed in our hogan. Medicinemen have drawn sandpaintings of the Holy People in our hogan. The sandpaintings are then offered to Mother Earth, I cannot abandon the Holy People, I cannot leave my sacred hogan.

(54) We also do the marriage ceremony in the hogan too. The

married couple will then make the hogan their home and it will become the home for their children as they grow up.

(55) The people will tell you, they don't want to move. Even the younger generation says the same thing, they don't want to move. I teach these things to my children, about our roots here on the land. I teach them about our traditional way of life. There are some Dineh who have forgotten these instructions. Many of the younger people have relocated and no longer remember the Dineh way. We do not forget, we will not relocate.

(56) If a person has a bad dream, or has been thinking about or missing a person who has passed on into the spirit world, usually the Blessingway ceremony will be done for them in the hogan. The Blessingway is for protection and healing purposes. During the ceremony, the person will be bathed with yucca soap and water. After that, a prayer will be said for him/her. This is just one of the ways we do our ceremonies.

(57) The Blessingway and any other ceremony is very sacred to us and when the ceremony is done at anytime, the person has realigned themselves with the spiritual beings.

(58) The ceremonies are being done for the younger people too.

The ceremony is done for them so they could always have that special bond with the spiritual beings and Mother Earth. And that they will always remember their natural mother and their home.

(59) I have always made my offerings in the morning and in the evenings. According to the colors through the day and the seasons, I make my offerings. The spiritual beings know me in this way. They know me because of all the things that have always been done on this land such as my umbilical cord, cradleboard, and all the offerings and ceremonies. That is why these prayers work, because the spiritual beings know me. I don't know the spiritual beings anywhere else. If I should leave this area, who would continue to do the offerings that I had responsibilities for? The spiritual beings would not know where I have gone to.

(60) What I have described, the ceremonies, the herbal gathering places, the offering places, who is going to replace these things if we move to another place? These things can not be replaced by anyone, anywhere. All these things are a part of us. It's in our minds, this is what we grew up with. We are all inter-related. Because of these things, we can not leave this area.

(61) Our forefathers were born, raised, and died here, they are buried here on the land. They did their ceremonies, offerings here, according to the ways they had been taught and lived by these teachings, as we are doing today. And for many, many generations, we survived. We honor our ways. And if we leave them behind, we will not survive. It will be the end of us. We live according to what we have been taught by our forefathers. There is no other way we can live. Our religious offering places are here, that's why we want to stay here. Our roots are here. Only the Creator can change these things.

VIOLET ASHKIE

Sworn and Subscribed to this 4th day of January, 1988.

My Commission Expires Oct. ,1991

Betty A. Tso
NORTARY PUBLIC

I, Betty A. Tso, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Affidavit of Violet Ashkie to the best of my ability and understanding and that Violet Ashkie did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

Betty A. Tso
INTERPRETER

Sworn and subscribed to this 4th day of January, 1983.

W Brooke Phillips
NORTARY PUBLIC

My commisslom expires My Commission Expires Oct. , 1987.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al.,	)	
Plaintiffs,	)	CIV.NO.
- vs -	)	AFFIDAVIT OF JACK HATATHLIE
UNITED STATES OF AMERICA, et al.,	)	
Defendants	)	

STATE OF ARIZONA)
) SS:
COUNTY OF NAVAJO)

(1) My name is Jack Hatathlie. I am from Coalmine Mesa. I am 59 years old. I was born into the Ashiihi (Salt People) clan and I was born for the Tsedeeshgizhnii (Rock Gap People) clan.

(2) My family has lived here since the beginning. My ancesters are buried around this land. We, Dineh, have been in this area along time. The Hopi people live nearby in the villages on top of the mesas. We have always been friends with the Hopis. Many Hopi people bring their piki bread, and fruit to trade for our mutton. This trading started hundreds of years ago and continues today. Two Hopis have married into my family. We are one, we are all related. Now Washington says we have to relocate because there is a land dispute with the Hopi. Washington does not understand,

the Hopis are our friends, Washington also does not understand, I cannot just pick up my things and move to some foreign place. I have been taught by my parents and grandparents that this land is sacred, it is our religion and we must always remain on the land. I cannot abandon our sacred Mother Earth.

(3) Much of my religious instruction has come to me from my elders. Amongst my people, when you are a small child you might herd sheep with your grandfather or grandmother. While you are with them they become your teachers. They teach you about the land and our Sacred way of life.

(4) Your grandparents will teach you about the offering places on the land, when to collect herbs, and where to collect herbs.

(5) We were placed here by our Creator. We were not placed on the new lands or any other area but were placed here on our ancestral land.

(6) The Creator has given us the responsibility of being the caretakers of this land. At times the natural balance of nature may fall out of harmony. It is my responsibility to make prayers to help restore and maintain the balance. I

must stay here to live up to that responsibility. This is the highest law I know.

(7) I help keep the balance by making prayers and offerings when things start to appear out of balance. I cannot make these prayers and offerings anywhere, only at specific sacred sites. These sites have been passed down through the generations. My ancestors were the original caretakers of this area. They have taught me about the land and about the sacred sites. Now it is my turn to caretake the area. This is a religious responsibility given to me by the Creator. This is why I cannot leave my sacred land.

(8) Over the rest of Mother Earth, where the white man lives, you hear about hurricanes, tornadoes, and flooding. A lot of them died from these storms. We never see or hear of any of these storms where we live. Our forefathers taught us the songs and prayers for these things; there are songs and prayers for the universe, the sun, the darkness, the wind, water, hail storms, rain, lightning, and many other things. We are in balance with the universe, Father Sky and Mother Earth by performing our ceremonies; we are connected to this land by the prayers and ceremonies, we belong here on this land.

(9) We belong here on the land, our way of life is here. Maybe if we tell Washington about our way of life, maybe they'll

understand us. They should try to understand all native people. All native people have their own teachings and way of life. Our ways could be respected the same as the white man's ways.

(10) Our religion is different than that of the white man. We do not go to buildings to pray or anything like that. Our land where we are known by the spiritual beings is where we pray. It is not possible to practice our religion on some foreign land or in some strange building.

(11) When a Navajo baby is born the first thing we do is introduce the child to the spiritual beings of the area and the spiritual beings to the child. Only if your are known by the spiritual beings in an area can you communicate with the Holy People. Otherwise it is of no use and no one could answer your prayers because they would not know you.

(12) There are certain things we do to introduce the child to the spiritual beings of an area. First, when the baby is born the mother offers the afterbirth to a young tree with corn pollen. From that time on, the child and the tree grow together and have a sacred bond between them. This was the way it was done a long time ago. We still know these things and we still do these things for our children.

(13) The afterbirth and the tree are all vegetation; the child will grow up and the tree will continue to grow as the child grows. My mother offered my afterbirth to a tree. I visit the tree often, for me it is a symbol of how I am tied to the earth.

(14) Another way we tie ourselves to our land is by burying the umbilical cord of a new born baby in our land. My umbilical cord is buried here on the land near a spring, called Crow Springs. It is buried in a sheep corral. It was buried in the sheep corral to connect me spiritually to Mother Earth so that I would have a special relationship with the livestock and make a living by the livestock. I used to herd sheep a lot when I was young. All the boys are like that. We also, as parents, did that for our children; some of their umbilical cords are buried in the sheep corral.

(15) As for a girl, her umbilical cord may be buried where the loom (rug weaving) is standing. This is done so that she will like and work at the loom (rug weaving).

(16) If the child's umbilical cord was lost, then the child would be lost. He/she will always be carrying things around and never settle down. It's very important to bury the child's umbilical cord, so that they will be able to be connected to the land, the livestock, and the spiritual

beings.

(17) I regularly visit the place where my umbilical cord is buried and roll around in the sand above it. I go there whenever I feel I need to be connected to Mother Earth and whenever I am near it. It was once part of me, now its part of Mother Earth. I must make sure no harm comes to that area or to my umbilical cord because that harm would also come to me.

(18) In the beginning of time we were taught how to make a cradleboard. A tall, straight tree was cut and made into a cradleboard. In our family we have used Ned Hatahlie's cradleboard; it was made a long time ago. The same cradleboard was used to raise our children. The cradleboard is made with songs and prayers with each part. The strings on the cradleboard are like the sunbeams, and the board that arches over the cradleboard is a rainbow. All these things are part of the songs and prayers and also our teachings. When the cradleboard is cut and made, the child will have a sacred bond with it.

(19) All of these things, that is how we get introduced to the spiritual beings of the area. That is why we cannot just get up and leave. We cannot make prayers and offerings and hold ceremonies in a foreign land where we do not know the

spiritual beings. These are not things which can be learned from books, these things we know from our ancestors and from the Holy People.

(20) If we relocated into Flagstaff or the New Lands area, everything would be different. The land, the vegetation, dirt, and everything is different and strange to us. We would not know the spiritual beings there, there would be no use in practicing our religion. Our religion would die.

(21) Our forefathers, grandparents, and our parents were born and raised here on the land. If we are relocated to the New Lands or any other places we will not be the same; we will be lost.

(22) Every form of life around us is related to us. We pray through these things to communicate with our Creator. For us, it would not have the same meaning to go up on the hills. It would not be the same.

(23) Like I have said in the past, if we are relocated to another area, where would we go to collect our medicine herbs, sands for sandpaintings, and our native food, such as wild tea, and also to make our offerings when we have our ceremonies? We don't know the areas. We are not known by the spiritual beings and the land itself. We would not be able to

practice the religious teachings of our ancestors, nor teach our children the ways of our people.

(24) We cannot move to the New Lands or any other area; we don't know those lands, they are unknown to us. We wouldn't know where we should go to make our offerings and where not to go; there may be such places as burial sites, and others, that as Dine (Navajo) people we cannot disturb. If we did disturb such places, then we would have broken our own natural spiritual laws that we as the traditional people live by.

(25) It is difficult to talk of these things because much of my knowledge is secret and should not be shared with outsiders. Here in our homeland we know where our offering places are, and we know the burial sites. We know where to go and where not to go. We are known by the land and the spiritual beings. On the New Lands we don't know the area and would be total strangers there. We don't know where to go to make our offerings. Our offering places are here on our land.

(26) If we relocated to the New Lands, or any other place, it would not be the same. It would be different. We would yearn for our homeland, our way of life, we would slowly die.

(27) Here on the land, when you go into a canyon or come upon a cliff, you call and the rocks will call back to you -- the echo sound. This is called the talking rocks. A place like this is also an offering place. I know these places here on our land and because I am known, these places work for me. This is how it must be.

(28) We know these things and have made many offerings here on the land. We can not leave these things behind no matter what happens.

(29) Our offering places have been passed down through the generations. My ancestors made offerings there, now me and my children and my grandchildren make offerings there.

(30) These places are sacred, we cannot choose new places, we cannot take these places with us and move. Anyway, it would be of no use if the spiritual beings did not know us.

(31) Here on the land, there are places where you can make your offerings to the spiritual beings or hold a squaw dance or a Yei-bi-chei Dance. These two ceremonies are community ceremonies. The ceremony may be done for only a certain person, but other people, your relatives, will help. These two are big ceremonies. These ceremonies are done almost every week especially during the summer months.

(32) If we relocated to another place, it would be different in every way, and we wouldn't be able to have the community ceremonies. We could not help our neighbors and relatives and they could not help us.

(33) How can a ceremony work in a strange place. Nobody would hear your prayers or communicate them to the Holy People.

(34) We have been here for a long time. Our forefathers, grandfathers and grandmothers were here before us. We were placed here on the land by our Great Creator. It is not for me or the Government to change these things.

(35) On our land we know the areas by their names and what they look like. The hills, valleys, the natural springs, the rock piles, the hollow places -- they all have names. Even a person has a name to go by. This land is special and holy to us.

(36) Howell Mesa is one of the community offering places. On the edge of Howell Mesa there is a small cliff; beneath the cliff there is a natural spring. It has been there for a long time, Li-esh-be-toh (the name of the spring). Why would there be a spring where no one would expect water? It's a holy and a special place; it is an offering place

which our forefathers, grandfathers and grandmothers used for many generations. Near the fallen cliff, there is a water well on the bottom, near a road. This spring is also one of the offering places. The spring is where you'd least expect to find water. I go to these places often, at least 5 times a month to make offerings.

(37) On Howell Mesa there are also many sacred rock formations where I make offerings; on one hill there are rocks in the images of a bear, big snake, a mountain lion. This is a special and a holy place for the people. Offerings are also made there. When the offerings are made, they are placed with songs and prayers. The offering places are sacred to the people. We Dine' make prayers and offerings every day.

(38) Standing Rock is also one of the offering places. Standing Rock was struck by lightning a long time ago.

(39) These rock altars are sacred to the Dineh. We know the spiritual beings at these rock altars, that is why our prayers are communicated to the Holy People. I go to these altars when I need to, whenever I'm nearby, for example if I'm out looking for my livestock. At these places I make prayers for different things, often for my livestock or for good health. I go to these places every few days during a week.

(40) There are also rock altar offering places down in Coal Mine Canyon. I go there to pray for good health for myself and my family, for the crops and the livestock too.

(41) We make offerings to an open space, to hills and other places. The spiritual beings live at those places too. They are with us at all times. That is how we communicate with the Holy People. That is our way.

(42) At dawn we make offerings of corn meal. Also at dawn when you go outside, you'll see shadows of things. These are the "Mirage Stone" people standing out there. The "Mirage Stone" people lived on the land too. They are also the spiritual beings. That's why we make offerings to the spiritual beings, trees, plants, hills, a place undisturbed, and other places.

(43) If we relocated to the New Lands there would be no offering places existing, we would be left there on top of areas that are sacred to other people who we do not know. Here we have offering places where we are able to communicate with the spiritual beings. The offering places are a special bond between the person and the spiritual beings. We make offerings all throughout the day, from the first thing I do when I offer corn meal at dawn, to the prayers for my family

and livestock at the sacred sites near my home, to the offerings at sunset. That is the Dineh way. Washington talks about allowing us to visit our land when we need to. Our religious instructions require us to stay on our land and make offerings all the time, all throughout the day, not just visit.

(44) We make our living by the land. Our forefathers were here before us. There are roots and plants that are part of our food. We get our meat supplies from the sheep and goats. Horses, donkeys, cattle are also part of our livestock. We live off of the land. We are not employed by anyone; instead we get our income from the livestock. We sell some and get money that way. Then we get our food from the livestock too. We make our living by the livestock and off the land. We each use certain areas of the land for our living.

(45) Our offering places are sacred to us, and the spiritual beings take care of us. By performing our ceremonies and offerings, in this way, we live a long life full of beauty. That's how it was before us; our forefathers are buried here on the land. Why should we leave them behind? If we leave our offering places and our burial sites we will not be able to survive. We know what the land is like, the spiritual beings know us here. If we go away from here we'll die of

loneliness and hunger. We'll be without our way of making a living. We won't be able to eat or sleep.

(46) When you make offerings to the earth, you always address the earth as Mother Earth.

(47) You always offer corn pollen or offerings made up of certain precious stones, jet, white shell, abalone and turquoise to Mother Earth.

(48) You make offerings to the natural springs, canyon walls, trees, a place that is undisturbed, hills, and many other places near here.

(49) Even after our grandfathers and grandmothers have passed on, the places where they have made offerings will continue to be used by the children and grandchildren. Those offering places that have been used by our grandfathers and grandmothers are sacred to the children and grandchildren, and if makes them to be bound to Mother Earth.

(50) Even when our grandparents or their children and grandchildren traveled on the road, they have always made offerings and prayers for safe journeys before they left. Then they returned to us safely. We still perform the ceremonies and protect ourselves in this way.

(51) We also collect certain herbs to use in ceremony. You cannot collect herbs from anywhere, only special places where they grow and where you are familiar with the spiritual beings.

(52) Some of the places where the herbs are usually collected are Howell Mesa, the Canyon (Blue Canyon), or places where the streams run in the area of my home.

(53) When you gather herbs, you gather them for a particular person and purpose. They cannot be gathered in advance and used when needed in the future. When you gather the herb, you must explain to the herb why you are gathering the herbs and for who you are gathering the herbs.

(54) It is also done with a song and a prayer. That is how you invoke the spiritual healing powers of the herbs. You call to the spiritual beings in the herb. In order to call to the spiritual beings you must know them, then you tell them who is sick. If you don't know the spiritual beings in the area then you couldn't invoke the curing powers of the spiritual beings.

(55) How can I gather herbs in a foreign area, the spiritual beings wouldn't know me, and the herbs wouldn't work. I only know the spiritual beings in my home area. That is why

I cannot relocate. I only know the spiritual beings and how to use their power where I'm from.

(56) The white man can buy their medicine in a store from anywhere and use it for anybody. Our way is different than the white man. If I gather medicine for one person's illness, the spiritual beings can heal only that one illness for that one person. I cannot store the herb for another time or person. I only gather what I need for that time. I must stay here to gather herbs for my people. I would be of no use elsewhere. I am needed here. I know how to use the herbs here, not somewhere else.

(57) The six sacred mountains are our home which we were placed in when things were created. Within the sacred mountians is where our teachings are, and our songs and prayers are also within our sacred boundaries.

(58) During the times when things were being created, the Earth Soil Bundle was created. It was made from the six sacred mountains. The Earth Soil Bundle was then placed inside the hogan. All these things are interrelated. According to these things, the fire poker, the fire in the middle, and water, food, and bedding were placed inside the hogan. According to all these things we have our ceremonies, we have our songs and our prayers. This is all part of the

hogan's songs and prayers. Even the sweat lodge has its songs and prayers too.

(59) We make our offerings at dawn and evenings, everyday with our cornmeal. We still do our ceremony and have it done for the family. In our ceremony we use white and yellow cornmeal and corn pollens. We do our ceremonies in the hogan. The fire has to be in the middle of the hogan and then we can perform our ceremony.

(60) The hogan is very valuable to the Dine people; it was placed a long time ago by the spiritual beings. Before the Dine came into existence, the hogan was the home of the wind beings. That's why it has a dome shape. In the beginning of time, the spiritual beings were like human beings, year to year, winter to summer, month to month, different times of the moon, the dawn, the blue universe, evenings, twilight and the darkness, and the sacred mountains. All these things were also created and placed in the hogan. Everything was created with songs and prayers; the hogan is very sacred and it has its own sacred songs and prayers.

(61) Before you move into a hogan, you offer corn pollens to the six main posts. Then the hogan is blessed and you can sleep and eat there. This is very sacred to the people. If something should happen to the hogan, for example, if any of

the logs break, it's a sign from the spiritual beings that something bad is about to happen. Before anything happens, you must replace the log and hold a Blessingway Ceremony to bless the hogan. Then everything will be in balance again.

(62) The hogan is the center of our way of life and our religion. It is very sacred to us. According to our religious instructions, ceremonies can only be performed in a hogan. You also have to have the ceremony done at your home where the spiritual beings know you otherwise it won't work.

(63) A hogan should never be abandoned unless it is struck by lightning or someone dies in it from other than old age. If they come and relocate us, they will destroy our hogan, and thus our connection to the Holy People.

(64) If someone destroys your hogan, it will affect you both mentally and physically; it will interfere with your way of life and religion. Many hogans have been destroyed after families have been forced to leave the land under the relocation program. These families are now lost and they suffer a lot.

(65) These are things I have learned over many years. You learn these things from your grandfathers and grandmothers. They teach you and tell you about these things. I have taught

these things to my children as well. If we are not destroyed my grandchildren will also teach these things.

(66) Even after a person has died and passed back into the spirit world, that person's body is put back into Mother Earth, and the spirit has gone back to Father Sky. We are taken back by our spiritual parents. But we cannot leave the land where our ancestors are buried or there will be a break in our relation to Mother Earth and Father Sky and terrible things will happen. These burial sites are very sacred and should not be disturbed.

(67) We are connected to Mother Earth and Father Sky in a spiritual way. We cannot sell any of our Mother Earth. If we did, then where would we go? There would be no place to go since we would have sold her. We are part of her, as much as she is part of us. We can not sell our mother ... it would destroy us.

(68) My grandfather taught me these things on this land when I was very young. My grandfather died of old age. He taught me a lot of things. Today I teach these things to my children and grandchildren. I have been taught these teachings can only be done on this land. If we are removed from our land our sacred way of life will end, we will not be able to live the Dineh way or teach it to our children.

(69) When we were first placed here, we were placed here with the livestock. I was taught that the vegetation, the plants, are also part of the livestock. Within the plants themselves the livestock emerged. The plants and the livestock are within the land. The people, plants, livestock, Mother Earth, and Father Sky are all one. All these things are connected.

(70) When I'm here at home I make offerings all the time. I make offerings at dawn and in the evenings. I have offered corn pollens to the hills and other places. There is an old Dine (Navajo) sweat lodge. Also it is used in the ceremony. The springs are the offering places. Medicine herbs can be found in the area too, and alongside the road, wild tea; sands for sandpainting are also in the area.

(71) If I were to leave my home and it was destroyed and I couldn't visit my old homesite and the places where I used to make my offerings, it is going to affect me in some ways. I think it can be very dangerous. There are a lot of minerals beneath the ground; the minerals in the ground are part of Mother Earth's body. If we take them out it's very dangerous for all of us. Minerals such as uranium, coal, oil and others cause various health problems.

(72) Here on the land there is no mining yet, but the government has ordered the relocation of the Dine (Navajo) people. The minerals in Mother Earth are her internal organs. When you mine you are tearing her organs out while she is still alive. How can she survive? All of the discussions now amongst the people are always about relocation; a lot of our elders, men, women, and children have passed on. They died of heartaches, loneliness and unhappiness, never knowing what was going to happen next. They have suffered mentally and physically. Even some of the people who have relocated have suffered a lot; some have passed on, and some have also just returned home and are living with relatives.

(73) Because our Mother Earth is dangerous, we make offerings with prayers, living in balance with Mother Earth and the spiritual beings. That's how we've survived for so many years.

(74) If we would move elsewhere who would keep Mother Earth in balance. Who else knows where and how to make the prayers and offerings.

(75) If we were to relocate and have a relocation home, it wouldn't be the same and have the same meaning as being at home, homeland.. It would be like being cornered into a small corner and not having much room to move around. You'd

always think about your homeland. You'd remember your home, relatives, cornfield, the road you used to travel on, the hills, the valleys, springs, your offering places and where you used to go when you were sad or happy.

(76) When you are not on your homeland you would only remember what it used to be like. You have known the land since childhood; it is not easy to erase your memories. You would be lonely and homesick for everything that used to be part of you since birth.

(77) My land is my life, it is everything that is important to me. You may call this my religion, it is the Dineh sacred way of life. I do not understand your religions but I do not take them away from you. If you take me away from my land, that is what you are doing to me.

(78) Our children, the younger generations, some of them have the education of the white man's world. They know what it's like to be in the white society. Some of our children, the younger generations, may follow the road of white man's society, and others may choose to come home and learn the ways of the Dine (Navajo) people. This is necessary for our survival.

(79) But for us, the older people, we will not survive if we

leave our homeland. We were taught from the beginning that the earth is our mother, and the universe is our Father Sky. You can separate us from our life, our religion.

(80) Our skin and the earth are the same color. From Mother Earth we emerged. The first breath we take when we're born is from Father Sky. Between our Mother Earth and Father Sky, they have given us life.

(81) Here on our homeland, we know every part of the land. Each day we make offerings to the spiritual beings. In return, the land and the spiritual beings know the people and take care of us. This is how it has always been and how I pray it will always be.

(82) But Washington is trying to change all of this with their relocation act. It seems like a long time ago we had many sheep. Then the relocation program started happening and Washington took away most of our sheep. Then Washington said our children can't build new homes. Now we are all crowded into one small house. When they said no more homes could be built it was a long time ago and our family managed in our house. Now my children have grown up and some of them have children of their own. There's no room left for all of us. There's not enough food either because our sheep have been taken away from us.

have been taken away from us.

(83) I don't know why Washington does these things to us. They should know how difficult it makes our lives. Sometimes I wonder how long we can survive like this. But this land is sacred, it is my spiritual homeland and I can never abandon it.

(84) If we move to a foreign place there would be no purpose in building a hogan, gathering herbs, making prayers, offerings, and ceremonies. All of these things would be of no use in foreign land with spiritual beings we don't know. Our way of life would be gone, our religion would be gone. If we relocate, our purpose to carry out the instructions of the Holy People would be meaningless. Then there is no reason to live.

Jack Hatathlie
JACK HATATHLIE

Sworn and Subscribed to this 10th day of January, 1988.

Bettie A. Tso
NOTARY PUBLIC

My Commission Expires Oct. , 1991

I, Betty A. Tso, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Affidavit of Jack Hatathlie to the best of my ability and understanding and that Jack Hatathlie did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

Betty A. Tso
INTERPRETER

Sworn and subscribed to this 10th day of January, 1985.

W Brooke Phillips
NORTARY PUBLIC

My commissiom expires My Commission Expires Oct. , 1991.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al.,)
Plaintiffs,) CIV. NO.
- vs -) AFFIDAVIT OF MAE TSO
UNITED STATES OF AMERICA, et al.,)
Defendants.)

STATE OF ARIZONA)
) SS:
COUNTY OF NAVAJO)

1) My name is Mae Wilson Tso. I am 49 years old. I live in Mosquito Springs, which is part of Big Mountain. I have lived there all my life. I have 9 children. My maternal clan is Flowing Water Together-Mexican Clan and my paternal clan is Towering House Clan.

2) Our Creator place us here on this continent even before the coming of the White man. We were settled without any artificial boundaries. There is no such thing as the Navajo or Hopi land. We were instructed to live in balance and harmony with all living things that are nourished by Mother Earth. I am the 9th generation of women from my family to live on this land here. My ancestors have been in this area for many hundred years.

3) Our religion does not include large organizations which congregate together. We don't have a building where we all gather to pray like in a church. Our religion is very much different from the white man's religion. We still have our traditional instructions that have been passed down. We have been instructed to continue in this way. We cannot leave the land where the Creator placed us. Our traditional ways need to be preserved for our future generations.

4) Our forefathers have taught us that the first beings created by the Creator are the Holy People, who are the spirits which are found in everything, including animals, plants, rocks, mountains and water. The Creator placed the Dine' upon the land so that we can be caretakers of this region.

5) The Creator and the Holy People instructed the Dine' that we have responsibility to maintain balance in the universe by making offerings and prayers to the Holy People at specific sacred sites throughout the land. If we are unable to fulfill this responsibility, we will not survive, life will no longer be in harmony with the spiritual beings.

6) Our sacred boundaries are within the 4 sacred mountains and between the dual rivers which are the San Juan, which is

located on the north and represents the male river, and the Little Colorado, which is to the south and is the female river. All traditional ceremonies have to be performed in our aboriginal homeland between these two rivers.

7) Our Creator has placed us here on the land, and has instructed us to live within the sacred mountains. The mountains are Blanca Peak in the East, Mt. Taylor in the South, the San Francisco Peaks in the West, and Mt. Hesperus in the North. There are two more mountains in the east, Governado Knob (Ch'eolii) and Huerfuno Mt. (Dzitnasodzilii).

8) The sacred mountains make up a traditional hogan, the traditional Navajo home. The four sacred mountains are the main posts of the hogan. The two other mountains in the east are the door posts of the hogan.

9) We have been instructed to make appropriate prayer offerings. These offerings are to be performed at special sacred sites. There we pray for protection for our families and our relatives, and live in harmony with Mother Earth. I honor these sacred sites and they cannot be moved. This is why I cannot leave my homeland. If I am relocated to another region, I will be abandoning my sacred responsibilities and have no reason to survive.

10) The Creator gave me the responsibility of caretaking my land. In order to do this, I must stay here permanently and make my offerings. I make my offerings regularly during every day and could not make an occasional visit for offerings, then leave. I must live here to fulfill my responsibilities. Our religion is sacred knowledge and cannot be revealed to non-Dine' people.

11) In addition, each Navajo clan was placed by the Creator in a specific area within the Sacred Mountains, and was instructed to live there and be caretakers of that area. Not all of the Dine' people came about on to the earth in the same way. There are many different Dine' clans, and each clan has its own stories about how it came about unto the earth and about its purpose. My clan, Flowing Water Together-Mexican Clan was placed by the spiritual people on what is called today Black Mesa. We were instructed to remain on Black Mesa and be the caretakers for this area. We have an obligation and a responsibility to the land to remain here and care of it. If we were unable to fulfill this responsibility, we will not be able to survive, we would have no reason to live.

12) It is my responsibility to the Creator to stay here. It is my purpose in life, to make my offerings here and live according to the instruction that was given to us, when we

were placed here on the land.

13) Members of my clan have been instructed by the Creator to remain as caretaker at the Black Mesa area, where they are able to communicate with the Holy People by making offerings and prayers at specific sacred places throughout the area in which we live. I, and other members of my clan and family, have been taught by our ancestors and our medicine men that our prayers, offerings, and ceremonies must be performed in particular places. These are places which have been designated by the Holy People as special sacred sites where we are able to communicate with them through our prayers and offerings.

14) My daily life (and the daily life of any traditional Dine') is intricately involved with the giving of prayers , offerings and ceremonies to Holy People in order to maintain balance and harmony in my life and my family's life. From the moment I awake until the moment I go to sleep it is essential that I be able to perform my responsibility of caretaking this land, and my family, by making offerings and prayers to the Holy People. I can only make these prayers and offerings where it is possible to communicate with the Holy People. My religion has taught me at which locations I

can communicate with these spiritual people. My ancestors have lived here on this land since the beginning of this world, and they have passed down through the generations their knowledge about how and share to perform our prayers and offerings.

15) Within the Big Mountain area, there are numerous locations which are sacred to all Dine' people. Further, my maternal clan and other clans have always lived on Black Mesa-Big Mountain and there are sites which are sacred to all Dine' people and which are located only on Black Mesa-Big Mountain. Moreover, my family and our ancestors have lived in a specific area of Black Mesa-Big Mountain since the beginning of this world, and there are many specific locations that are sacred to members of my family, most of which are tended regularly to offer prayers to the Holy People there and to insure that the sacred places have not been disturbed. Finally, these are locations that are sacred only to each individual. The only way I can live my life is to live on this land on which my family has lived since the beginning of time. It is my responsibility to make my offerings and prayers to the Holy People. So my family will always live in balance and harmony with the Holy People. In order to explain my religion and my spiritual attachment to this land, I will describe some of the sacred

sites at which communication with the Holy People is possible and will describe the practice of our religion.

SITES SACRED TO THE INDIVIDUAL AND FAMILY

16) Each Dine' is individually tied to our land, from the beginning of our lives, at birth. When a child is born his/her afterbirth is offered back to a young tree. The burying of the umbilical cord symbolizes the transition from the nourishment of one's natural mother to a life of nurturing by one's spiritual mother, Mother Earth. The mother of the child ill decide where to bury her child's umbilical cord, for example in the livestock corral or cornfield for a male, or for a female child only, her umbilical cord may be buried where the loom is standing or inside the hogan. This is done so that when the child grows up, he/she will like to do these things, and that the child may be able to make his/her living by it. The burying of the umbilical cord also creates a deep and sacred bond between the child and Mother Earth. By burying of the child's umbilical cord, they are connected to the land and their way of life is set of them. My mother told me my afterbirth was offered back to a young tree near the hogan where we lived. I performed the same ceremony for each of my children; all of my children's umbilical cords are buried at specific locations on the land. To each individual, the

burying of the umbilical cord has a special significance and is a bond between them and Mother Earth.

17) Another example of a location sacred for each individual is the tree from which their cradleboard was made when they were born. Before the cradleboard is made a tall, straight tree is selected The tree will represent that the child will grow up with a good heart and mind. Then we make an offering of corn pollen to a tree. Then a piece of the tree is cut and made into a cradleboard representing certain things. The bottom part of the cradleboard from left to right represents Mother Earth and Father Sky. The headboard represents a rainbow. The board that is at the foot of the cradleboard represents the sacred mountains. The strings that are used to strap the baby to the cradleboard represents the lightnings. A cradleboard is not just to carry your baby around in, but also to keep your child close to all the things that are important to the Dine' people, their identity, culture and religion. The child grows in the cradleboard until he or she is walking. The cradleboard is offered back to the tree or placed underneath a rock, you never take it back because it was offered back to the spiritual beings and you don't have any use for it either. I was raised in cradleboard, and my cradleboard was placed underneath a rock. My children were also raised in cradleboards, and their cradleboards were also offered back

to the spiritual beings. From that time on, the tree from which the cradleboard was made and the rock or tree to which it was offered is a sacred spot to the individual. Where my cradleboard and the cradleboards of my children and their children were offered to the spiritual beings are sacred to us.

18) In addition to these sites, there are many locations which become sacred to an individual because ceremonies which occurred there. For example, many ceremonies are performed in the individual's or family's hogan and during that ceremony offerings are made by the individual to specific locations on the land surrounding the hogan, which locations then become sacred.

19) All ceremonies have to be performed for individuals at their homes, since the spiritual beings recognize the individual's special relationship with his homeland. This recognition cannot be re-established elsewhere. Each Navajo's hogan is both the traditional place of residence, and the place where many ceremonies are performed. The hogan represents all creations, and all the teachings must be performed there. The top of the hogan represents Father Sky. The bottom part is Mother Earth. Between these two are all living beings.

20) In certain curing ceremonies the sand paintings of the Holy People are dawn on the floor of the hogan during curing

ceremonies, then the floor becomes consecrated.

21) A Navajo is born into his family's hogan, and from this time on for this individual this hogan represents the holy universe of the Dine'. Even when a Dine' child reaches adulthood, he or she can move from the family's hogan only in certain circumstances. When two Navajo marry, the man goes to live with his wife's clan. The couple must build a new hogan within the traditional use area of the mother's family, near to the parent's hogan. Even though the new couple has built their own hogan, the man often returns to his family's hogan of a variety of ceremonies that can only be done there, within their own homes, they do their ceremonies for their own family. According to our teachings, we can abandon our hogan: when it has been stuck by lightning or when a person has died in the hogan. When it has been struck by lightning it has to be moved and rebuilt. In the other circumstance a new hogan is built.

23) The Blessingway ceremony is a ceremony that is performed many times during an individual's life. It is performed when an individual becomes mentally, emotionally or spiritually imbalanced. Through this ceremony, the individual is realigned with nature, the Creator and the universe. The Blessingway ceremony is for protection, to be brought back into balance with Mother Earth and the

spiritual beings. During a Blessingway ceremony, we make offerings for our children and pray for protection and lead a good life. Offerings are made with corn pollen. An individual will make an offering during the ceremony to a young tree, to a plant, to a hill or to a spring. Afterwards, the place where this offering was made, becomes sacred to the individual. It is a location in which an individual can communicate with the spiritual beings and he must be certain that it is not disturbed, or the individual will fall out of balance with the Creator. The Blessingway ceremonies have been performed for my children and myself in our hogan countless times during our lives here, and many, many locations near our hogans therefor must be protected by us and are sacred to each of us.

24) Many of these sacred locations are sacred not only to the individual, but to the entire family. These locations have special significance, to the family, children and grandchildren, these locations are sacred. This knowledge is passed on through the generations to every member of the family.

SITES SACRED TO THE CLAN

25) In addition to the sites which are sacred to an individual or a family, there are also sites that are sacred to the

people of each clan in the area in which that clan resides. These sites are sacred because offerings of prayers has been made there to the spiritual beings at these locations. The spiritual knowledge about these locations has been passed down through the generations by the medicine men.

26) There are offering laces at natural springs such as Dove Springs, Toh-ha-tiich springs and Mosquito Springs. The Springs are sacred because offerings of many prayers have been there to the Spiritual beings. There are many such springs throughout the area in which I live.

27) Our traditional concept of the water we use, contain a healing and life nurturing power. For every traditional ceremony, the water is usually placed first before the ceremony starts. For example, in the Shootingway Ceremony, the water is used during the ceremony . It's a nine night ceremony, continuously. After the sandpainting is completed on the final day, the water is sprinkled to the door then the water is thrown out for you before you go out. Afterward the water is given to you along with the corn meal as being accompany by a sing. Later during the all night Chanting ceremony on the final night, the water is again sprinkled 4 times round the fireplace and the water is thrown our the doorway again. You follow the water out to greet the dawn spiritual people. You have been re-aligned

with the spiritual beings.

28) In the Blessingway Ceremony, for the individual for whom the ceremony is being performed is usually bathed with yucca soap and water. The water that is used contains the healing elements. It's for renewing and re-aligning yourself with the spiritual beings.

29) Specific instructions on when and how these ceremonies are to be performed have been passed down through the generations by medicine men. Before the spring water is taken of ceremonial usage, prayers must be performed at the springs.

30) Rough Rock Point and other major offering places are used by many people who lived in the area. People from my area make offerings at these places for their protection, healing and blessings of their family and livestock.

31) There are other offering places, such as hills, different rock formations, plants, to a young tree, to a tee that was struck by lightning. An offering place will be chosen by a medicine man. He will be instructed by the spiritual beings through a vision.

32) We don't just make offerings to the vegetation, plants and

such others, but to the spiritual beings of the vegetation, rocks, and so on. It is the spiritual beings within these objects that we pray to. You let the spiritual beings of these places know that you are a part of the community and in return, they know you. These offerings are for protection and guidance that you are part of the creations and community. The spiritual beings are asked to raise you and your children as their own. So, in this way, we are connected to the land and all creations. This is our way of life.

33) When we make offerings at specific sacred springs, plants, young trees, hills or rocks, we are ensuring that the spiritual beings at the locations on our land know us and our family and will protect us. For example, certain springs are sacred because of our traditional concept of water as the mother of all living beings is based on the fact that we all depend on water for our daily survival. The offering to a spring for a child establishes a special relationship between the individual and the spring, which will give the person protection and spiritual guidance. All other ceremonial offerings are conducted in a fashion similar to the above example. The offerings are addressed to the spiritual guardians within their sacred places. They are addressed to ask for protection from evils and sicknesses, and also for guidance on a spiritual path. This

is how we live our religious practices, which are also the basis of our livelihood. For example, when you make an offering for your children, you tell the Creator,the spiritual beings, the winged beings, the plants and Mother Earth, that your children are among them, and ask for guidance so that they may grow up in a good way. When this relationship is established our children are there among them. Then the children are known by the Creator, spiritual beings, the winged beings, plants, Mother Earth, and by the four-legged beings, as well as all other beings. Then they are known from all directions and living beings. They establish their spiritual ties on the land and its environment. They live and grow among the spiritual beings and will be protected by these spiritual entities. They are connected to this specific area of land and to the spiritual beings here. Making these offerings is a central part of our religion, our way of life. These offerings connect us to the land. Here we know the springs by name and they also know who is living in the area. They know us because we make offering to them. We cannot ignore and abandon these sacred sites and leave them behind. There is no identical site we can go to and practice the teaching of our forefathers.

34) In addition, the burial places of our ancestors, relatives and children who have passed on to the next world are

located on this land in our residential area. These places must not be disturbed. It is our traditional taboo. Whereas, the burial sites have to be avoided. There is no such offerings conducted at these places.

35) In addition, many of our ceremonies require medicine plants. We have been instructed by our Creator that the medicine plants and healing herbs can be gathered only from a specific location. Healing herbs are very sacred plants to the people. When a person is sick, he will go to a hand trembler. A hand trembler is like a diagnostician, the hand trembler will tell the sick person what is causing the sickness and what kind of ceremony or healing herbs are required to help the sick person heal. When you are collecting medicine healing herbs, you have to collect for the individual sick person. You make an offering to the plants in your prayers, you have to know the plant's name, the person's name, and the reason. The medicine plants that you have gathered cannot be used for anyone else, nor can they be stored and kept for use at a later time. When you are collecting herbs, you cannot collect them without making an offering to them and you cannot collect them in large quantities. There are specific sacred herbs for all kinds of sickness, such as heart, lungs, liver, kidney and even for common colds, headaches, for pregnant women and for any other such sickness. All these medicine plants have a

specific song and prayer to go along with them. When you collect these herbs, you have to make an offering to them to get the healing spirits of the herb to work. You have to know the prayers and songs for the herbs to collect them. You only collect what is needed, nothing more or less.

36) These sacred plants and herbs only grow in certain areas on the land. They can only be gathered from locations which our ancestors and medicine men have instructed us are sacred sites which have filled with the power of the spiritual beings. We know the sacred plants of the area and they know us. If we went to another area of land, we would not know the spiritual beings and they world not help us.

37) Moreover, we have also been instructed through the generations not only about sacred places, but about evil places that must be avoided. For example, burial site, deer corrals. The deer corrals were used during hunting season and where the deer hides are tanned. Only certain people that have the knowledge and skills can go to the places. The burial site is a taboo to all of us. No one can go there. There are some locations which are inhabited by evil spirits and to be at those spots would create imbalance to the individual. To make prayers at these locations would cause serious harm. On my land, I know where these places are and know never to go there, and so do

all of my family. However, if I were to relocate to a new place, it would not be the same, I would not know where or how to make offerings on strange land, as I only know where the offering places are on my land. I would not know where any evil places are that I must avoid.

38) Big Mountain is a major source of herbal medicine for use in Dine' ceremonies, and is visited constantly and used throughout the year. Howell Mesa has many herbs used for healing and is sacred to all Dine' people. Medicine men gather these herbs during all times of the year at specific locations which we know to be sacred because of the teachings of our ancestors. There are other places in the area where I live, where the medicine men/women can gather herbs for healing purposes.

39) The daily life of the traditional Navajo is inextricably bound to the spiritual beings on the particular land which we have been instructed to caretake. I make my offerings of prayers everyday to the spiritual beings. For example, when I wake at dawn, early in the morning, I make my daily offerings to the east with white corn meal. I stand outside my hogan facing east, and pray to the spiritual beings. I know there are many sacred places where I can make my offering to the spiritual beings that protect me. I thank

the Creator for a restful night, and throughout the night, of his protection. And I ask for his guidance and protection throughout the day. I pray for my children, family and relatives. In the evening, after the sunset, I make another offering of yellow corn meal. Again I thank the Creator and the spiritual beings of their guidance and protection throughout the day. I ask for a restful night and I pray for my children, family and relatives. I also pray for whatever problems I have.

40) Throughout the day, when the meals are prepared, prayers are always said to the fire poker, fire and address our Father-Sky, Mother Earth, and to all four directions. A little bit of food is given to the fire as an offering. Fire is sacred to all of us, it helps us cook our food and keeps us warm.

41) Offerings of corn pollen, cornmeal or stones of jet, white shell, abalone, and turquoise are made only during a ceremony. You have to have a reason. Offering of cornmeal at dawn and evening are done everyday. These are the teachings of our medicine men and our elders. We have to live according to these instructions.

42) Prayers of offerings are made to spiritual beings for protection, healing and curing. To re-align ourselves with our Creator, Mother Earth and the Spiritual Beings.

43) Through our ceremonies, we have our teachings, and through our teachings, our way of life. Our way of life is our ceremonies, our sacred songs and prayers. This is our religion. Our religion is what we live by, how we live. Our religion and our way of life connect us to the land. All these ceremonies must be performed on the land where you are from. The spiritual beings must know you otherwise the ceremony will not work. We are only known by the spiritual beings in our area. We were instructed by the Creator, who placed us here on the lands to live according to our ceremonies, and our offerings. These things are our teachings. The teachings of our elders.

44) We are connected to the land in any different ways. In our ceremonies, our songs and prayers are our way of life. We are connected to Mother Earth by the burying of the umbilical cords and the offerings that have been done for us through the ceremonies. We are known by the spiritual beings here. We were instructed by the Creator never to leave our sacred homeland. The offering places are sacred to me. They cannot be picked up and moved. It is my purpose in life to caretake this land, by making offerings and doing our ceremonies. If I leave from my homeland, I would not be able to make my offerings and I would have no purpose left. I would not survive elsewhere.

45) I want to remain here forever. I want to pass on sacred knowledge of this land to my children, and their children, and the future generations. But the Federal government is trying to force me to relocate and forget my land, my religion, and my children's future.

46) I have stated my resistance to relocation before and will continue to resist to the very end. The Federal government has impounded most of my livestock. We depend on our livestock for our survival. We do not raise livestock to sell to make money, just to eat. When they impound our livestock they are taking away our food. That is why they want to take our livestock away from us, so we cannot survive out here anymore. When the Federal government came and took my horses away from me, I tried to stop them. I needed the horses to round up the sheep, goats and cattle. When I tried to stop them they arrested me and put me in jail.

47) I was so upset, I was treated like a criminal. They tried to make me take off my traditional clothes and put on a prison uniform, and take down my hair from the traditional Dineh bun. I was very frightened by all of this and my heart started beating very fast. The next thing I knew I woke up in the hospital after suffering

a heart attack.

48) The hearings for my case went on for 3 years before the charges were finally dismissed. During that time I was always worried that they may come for my few remaining livestock when I was at trial or in jail.

49) My son was also arrested in 1986 when he tried to prevent the fencing crew from building a fence that had already destroyed sacred religious sites and was going to destroy more sites if it continued. They say they build the fence to control our few livestock, but all the fencing does is make impoundment easier and destroy our religious sites.

50) The Federal government also does not allow us to build new homes on our land. My children have all grown up, I am a grandmother now. Some of my children need to build their own homes for their own families. I have 9 children and it is too crowded for all of us to sleep in the same little home. When it's warm enough some of the children sleep outside because it's so crowded in the house.

51) All of these things make our lives more difficult. I am worried all the time. Sometimes I don't know if we

can survive out there any longer. This is what it's like living under the threat of forced relocation, livestock impoundment and the construction freeze. They have taken away most of our livestock, they don't let us build any new homes, they have arrested me and my son, any day they may come and force us off of our sacred homeland, what is next. My land is the only place I can practice my religion and that is the most important thing to me. As long as I am alive, I will continue to resist.

52) On the new lands, we would not be able to do our ceremonies. There are no sacred sites where we can make our offerings and gather the medicine herbs, the spiritual beings don't know us there. We don't know where the offering places are. For example, we make offerings to the springs here and the spiritual beings know us. The springs raise our children and us; we think of the springs as our mother. Our forefathers had taught us these things and our medicine people have made offerings for us. The spiritual beings know is and e know the springs by name and we have known the since a child. We cannot leave them. The offerings are a central part of our religion. They bind us to the land. We cannot leave our offering places behind.

53) Life is a circle. Our roots are way down deep. How can you

pull someone's culture, their way of life, their religion out? When you try to do that by relocating the people, we suffer in many ways, not only physically but mentally. You have not only cut off parts of the individuals, you have also destroyed their families in many different ways. Our cycle of life is deeply rooted to this land. The impact of acculturation has already physically and psychologically disrupted the Dine' culture. The relocation law is a genocidal act. The relocatees have lost their identity and abandoned the responsibilities of their cultural heritage.

54) These are the reasons why we cannot comply with the relocation law. When you have relocated our relative, you have taken them away from who they are, what they are made of. The young children, both male and female -- there is no one to teach them about how the Dine' people have emerged onto Mother Earth. There will be no one to tell them the meaning of Mother Earth. Our teachings will not be passed on to the future generations, no our religion or our way of life. Because of these things, we have chosen not to relocate

55) Today, our way of life is not respected; our way of life is being taken away from us. Our religion is being denied to us. We are connected to Mother Earth and make our living off the land. If we leave, we will not survive. If you cut

our a human heart and placed it on the side, the person would die. Our Creator has us placed here on the land, we are part of other Earth's heart and our land is part of our heart. If you relocate us onto another part of the land, we will not survive.

Mae W Tso
MAE TSO

Subscribed and sworn to before
me this 20th day of January, 1988.

Betty A. Tso
NOTARY PUBLIC

My commission expires My Commission Expires Oct. , 1991.

I, Betty A. Tso, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Affidavit of Mae W. Tso to the best of my ability and understanding and that Mae W. Tso did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

Betty A. Tso
INTERPRETER

Sworn and subscribed to this 20th day of January, 1988.

Lee Brooke Phillips
NORTARY PUBLIC

My commissiom expires My Commission Expires Oct. , 1991.

Northern Arizona University · FLAGSTAFF, ARIZONA 86011

DEPARTMENT OF ANTHROPOLOGY
BOX 15200

May 11, 1981

United States Senate
Select Committee on Indian Affairs
6313 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Sir:

Enclosed is a report entitled: "Land and Religion at Big Mountain: The Effects of the Navajo-Hopi Land Dispute on Navajo Well-being". The report discusses some important consequences of legislation and court decisions in the Navajo-Hopi land dispute. My testimony for the oversight hearings on the Navajo and Hopi Relocation Commission's Report and Plan on May 20, 1981, will be a summary of its major points.

The relationship between land and Navajo religion has received little or no attention in attempts to resolve the dispute and plan for the future, in spite of its pivotal role in traditional Navajo life. There are several reasons for the inattention: First, religious beliefs and practices are personal matters and there are good reasons for not discussing them with outsiders. Second, religious beliefs and practices are difficult to translate across languages and cultures. Third, there is a tendency to prejudge and evaluate other peoples' religions in terms of our beliefs. Finally, planning and policy making are dominated by economic considerations and it is hard to assess the dollar costs and benefits of religious beliefs and practices.

Months of hard work and the trust, hopes, and prayers of Big Mountain people are behind our efforts to explain the relationship between land and religion at Big Mountain. I think that if you look at our findings with the clear focus of suspended judgement and with understanding, you will agree with our conclusion that Big Mountain is a unique community. I hope you will also honor the request that the Big Mountain area be set aside as a sacred area.

Sincerely,

John J. Wood
Associate Professor

Land and Religion at Big Mountain

The Effects of the Navajo-Hopi Land Dispute on
Navajo Well-being

A report to the Congress of the United States of America

Prepared on behalf of the Big Mountain Community

by

John J. Wood, Associate Professor of Anthropology
Northern Arizona University

and

Kathy Mullin Stemmler

with the assistance of

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cover illustration: Internationales Komitee für die Indianer Amerikas

photographs of red willow spring before destruction: David Williams

remaining photos: John J. Wood

April 5, 1981
Flagstaff, Arizona

"She said: From the time I started knowing what's going on, I know I been living around this area; around Red Lake up to here, and up to now I'm used to living on the land I grew up on and raised my kids and grandchildren. The land dispute is really bothering me; it's hurting me physically and mentally. I can't sleep, my heart is hurting. It's bothering me a lot, my son (She's calling you my son). Us old folks, the grandmas and the grandfathers, from the beginning were taught to live in hogans and to raise sheep and to pray to Mother Earth, the wind, the sun, what gives us life, the air we breath, the Mother Earth we walk on and the water we drink. We are told that each of them has gods and the fire that burns in the center of our hogans. Right now our stock has been reduced. We feel like we are being thrown in a hole. Our sheep, our life is being taken away. I think about the children, the grandchildren. What will happen to them? I have been trying to live a happy life. With a lot of stock I might not have to wait for money (from welfare). Right now they all disappeared. You look around and see only a few, and it hurts. If you can help us, thanks. I can't understand or speak the language of yours. I hope you help us. I feel helpless...

Where is the land we're moving to? We have no place to go. I am well-known among the hills; among the ditches; rivers; streams; plants. I have touched them in various ways and they have touched me the same. There is no place but here."

Asdzą́ą́ Yázhí Bedoni, Age 72
February 16, 1981
Joann Roan, interpreter

> Our first task in approaching another people, another culture, another religion, is to take off our shoes, for the place we are approaching is holy. Else we may find ourselves treading on men's dreams. More serious still we may forget that God was there before our arrival.
>
> The Primal Vision
> by John V. Taylor

Introduction

Big Mountain is a community of Navajo people scheduled to relocate elsewhere because their ancestral lands are ceded to others through legislation and court decisions resulting from the United States Government's involvement in the "Navajo-Hopi Land Dispute". They continue to endure, in spite of almost ten years of not being able to build new homes or improve old ones, of five years of devastating livestock reduction and fencing, and many years of wondering what the future holds for their children and grandchildren. They continue to endure because their source of strength, their religion, gives them the necessary determination and resolution.

Religion at Big Mountain is the same as life, the land, and well-being. The land and the Mountain are Holy, and Big Mountain people are their caretakers. If they are forced to leave the land, they will be forced to leave their religion.

Many times Big Mountain people have tried to explain their attachment to and responsibility for their land and the Mountain, and it seems that hardly anyone listens. The Navajo and Hopi Indian Relocation Commission, the body that is charged with carrying out relocation under Public Law 93-531, listened in late 1978 and early 1979. They conducted on-site interviews and visits, and contracted with anthropologists, John J. Wood and Walter M. Vannette, to conduct further interviews and to assess the significance of sacred places at Big Mountain (Wood and Vannette 1979). The Relocation Commission's intention was to try to get the Big Mountain area set aside as a sacred area, following a favorable court decision regarding a boundary question. The court decision was unfavorable and the matter was dropped by the Commission.

Late in 1979, John J. Wood sent a letter and a copy of the assessment to the Task Force charged with reporting to Congress as required by Section 2 of the American Indian Religious Freedom Act (Public Law 95-341) explaining that relocation might be a violation of civil rights, and that the Task Force should inquire further about the question of traditional religious leaders. Nothing further was done, to our knowledge, other than a note of receipt of the letter and assessment in the Task Force's final report to Congress.

In January of 1981, Wood was asked by members of the Big Mountain Community to further investigate the relationships among land and religion through on-site visits and interviews, and to write a report to members of Congress explaining why it is essential that the Big Mountain area be set aside as a sacred area, not to be disturbed by relocating its caretakers, by mining or any other disruptive activity.

As professional anthropologists, we think that the evidence shows clearly that the Big Mountain area and its people are unique. The largest part of this report is our attempt to convey that uniqueness in words as close to the words of the Big Mountain people as we are able. Much of the information in this report is not usually given to "just anyone", particularly to non-Navajos: it represents the identity of the Big Mountain people, and it is their desire and our wish that it be treated with respect.

The People

The Big Mountain community, an isolated region of about 150 square miles of northwestern Black Mesa, is located between Blue Canyon and Dinnebito Wash, focused on Big Mountain. Elevations ranges from a little over 7000 feet at Big Mountain to about 6500 feet on its east and west slopes, to nearly 5500 feet on the flats toward Blue Canyon. Vegetation is very diverse on Big Mountain, and dominated by pinon and juniper. The slopes to the east and west carry stands of pinon and juniper mixed with grasses. The transition to open grassland is virtually complete at Blue Canyon. It is very difficult to get into or out of the area in bad weather, due to poor road conditions.

No one knows for certain how long the ancestors of the present community members have lived in the area. By their own testimony, Big Mountain got its name three generations before Fort Sumner, which would place the event in the late 18th century. Three generations before Fort Sumner there was a war in the vicinity and a young warrior crawled to the top of the mountain to make an offering and to pray for his recovery. It took him two days and two nights to reach the top. When he returned to his family, in better health, he told them how long it had taken to get to the top, and they exclaimed: Dził Ntsaa! (Big Mountain!).

There is no accurate census, but we estimate that there are several hundred people related by marriage and descent who constitute the Big Mountain community today. Most of the members live on Hopi-partitioned lands. The Big Mountain "community" crystalized among those persons who oppose relocation and fencing because of what they know will happen to their way of life. But the community crystalized along relationships and interactions that existed long before the Land Dispute legislation.

Navajo social identity is defined first by membership in mother's clan (a matrilineal clan); then by father's matrilineal clan, which must be different from mother's. One's identity may also be defined, especially among older people, by maternal and paternal grandfathers' matrilineal clans. Navajo social relationships and roles are largely kinship relationships and roles, and kin terms are extended beyond the immediate family; hence, a person's clans give direction to patterns of mutual aid and interaction.

At Big Mountain, as in other rural areas of the Reservation, people live in camps or homesteads spaced from one-quarter up to one mile or so apart. Land is not privately owned. Use rights are inherited, usually at the camp level. A camp typically includes at least one traditional, octagonally-shaped, hogan, and perhaps several other rectangular frame or stone dwellings; a ramada or shade; a sheep pen; a wood pile; and an outhouse. There is no electricity, running water, or indoor plumbing. People usually heat and cook with wood or coal.

A camp may house a married couple with young children, a widowed elderly person, and extended family or many other combinations of relatives. Married couples tend to establish their own camps when they get on their feet, almost always in the traditional use area of their parents, most often the woman's mother's use area. If this process continues over time, a "land use community" evolves with a core matrilineal clan. There are five of these "land use communities", tied together by marriage, that define the Big Mountain community; so that everyone is related by marriage or descent.

Livelihood at Big Mountain since stock reduction is precarious at best. Virtually everyone had stock and depended upon them for meat, wood, cash, and credit. People also farm, since the land is rich in this region. Many people, age forty and older, are unskilled and uneducated except in these pursuits.

Some older people worked for the railroad in their youth, and they receive small social security and retirement checks. Because of the building freeze and the lack of local economic development, younger, formally educated people live and work off-reservation in border towns or reservation communities like Page, Tuba City, and Kayenta. Young people visit home frequently, often every weekend, and contribute financially and emotionally to family well-being.

The thread running throughout Navajo culture that defines well-being, indeed life itself, is "...a religious system which has for years enabled the Navajo to retain their identity in a rapidly changing world (Reichard 1974:xxxiii)."

Religion

A religion is"...a system of beliefs about the nature of the force(s) ultimately shaping man's destiny, and the practices associated therewith, shared by members of a group" (Lenski 1961:331). A religion synthesizes, through its legends, symbols, and rituals, the ethos or world view of a people; and religion as lived in a community is an important means of existential problem solving. It is not surprising, therefore, that all peoples have a religion.

All peoples have a religion, and all religions meet the same basic needs, but all religions do not start from the same assumptions. In this country we pride ourselves in our constitutional right to practice the religion of our choice. Yet our statements about and our policies concerning other religions are almost always based on the assumptions, philosophy, and logic of the Judeo-Christian tradition, exclusively. These ethnocentric statements and policies are surely due to ignorance rather than malice. At least this was the position taken by framers of Public Law 95-341, the Joint Resolution on American Indian Religious Freedom.

> The Joint Resolution on American Indian Religious Freedom states: "That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

Although there is an exclusionary clause, "...including but not limited to...", the major thrust of the Joint Resolution is not religion as lived in a community. Religion as lived is more than "access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites", particularly in religions outside of the Judeo-Christian tradition.

The same narrow view is reflected in Section 21 of Public Law 93-531, the Navajo and Hopi Land Settlement Act, which reads as follows:

> "Notwithstanding anything contained in this Act to the contrary the Secretary shall make reasonable provision for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes."

Religion as lived at Big Mountain is life itself, the land and well-being. Sacred places and practices are part of the definition of occupancy there: to limit people to "use and access" without occupancy betrays a fundamental misunderstanding of the nature of religion at Big Mountain.

The Land as Home

In the Navajo way of thinking there were four prior worlds. The foundations of the present world were laid in an evolutionary succession of miraculous beings and events.

First Man and First Woman, together with other beings, emerged into a fourth world bounded by four sacred mountains: Blanca Peak in the east, in Colorado; Mt. Taylor in the south, in New Mexico; San Francisco Peak in the west, in Arizona; and the La Plata range in the north, also in Colorado. The world was still soft then. Life was hard to form and there were monsters that caused untold hardships.

One day First Man, who was living with First Woman near Huerfano Mountain in New Mexico, found a baby on top of Gobernador Knob. The baby grew into Changing Woman. She created the four original Navajo clans from her body, and taught the Navajo how to live. Her twin sons by the Sun -- Monster Slayer and Child Born of Water -- rid the earth of evils and made the land within the four sacred mountains safe and secure. These post-Emergence events are commemorated in the Blessingway legend and rite, said by some to be the core Navajo ceremony (Wyman 1970). The sacred mountains and the traditional Navajo dwelling, the hogan, figure prominently in the legend and rite, and in the thoughts of the Navajo people. As residents of Big Mountain put it: "This is how we live; This is where teaching starts".

The hogan is a home and also a place to pray; it is like a "church", and all traditional ceremonies must be held there. When a hogan is built it is blessed in a rite with songs and themes from Blessingway. Even articles and furnishings that have everyday uses, such as the corn grinding stone, a bundle of sticks used to stir corn, a wisk or brush, and the sleeping sheepskin, have a special place and an use in prayer.

At Big Mountain, it is said that the area enclosed by the sacred mountains is a hogan. The mountains are posts. Within these are a female mountain, Black Mesa, and a male mountain, the Lukachukais.

Rivers and springs are veins, and various geographic features are body parts. (Everything is male or female in nature, since that is the way life begins.) Females sit on the side of the female mountain in the hogan, and males sit on the side of the male mountain. The location of Black Mesa is also where a woman gives birth in the hogan. When a woman is in labor there, there is a sound that represents the four sacred mountains and the land. After a baby is born the afterbirth is offered to a young tree, so as the child grows, the tree grows.

Some families have a mountain soil bundle. It is patterned after First Man's "magic corn bundle":

> "...'This medicine has been placed in the hands of all of you'. It is Navajo! The mountains belong to all, and the mountain soil bundle insures its owners a comfortable partnership with the Holy People who stand within these mountains. In a family a mountain soil bundle is an heirloom which is guarded by all family members, again it is 'our medicine' and 'our mother'"(Wyman 1970:22).

Katherine Smith's medicine bundle is a deerskin bag containing four smaller bags with soil from the four sacred mountains, each tied with the jewel that is for each mountain -- white shell for the east, turquoise for the south, abalone for the west, and jet for the north. She had it made at great expense. It is: "Very holy"; "our how to believe on"; "my mind". It brings strength and wealth. It also is like a hogan.

Small pieces of the four jewels representing the sacred mountains are used as offerings to the Holy People when prayers are said. There is a basket, too, that is used in all ceremonies. The design represents the four (or six) sacred mountains enclosed by a protective rainbow surrounded by clouds. The design has an opening to the east, like the hogan, and the emergence place is in the middle.

Thus, the origin of the Navajo way, the reproductive power of nature, forms of worship and ceremony, the land, and the home are tied together in a meaningful way. It is in this system of thought that we first begin to see how religion is life itself and well-being to the Big Mountain people.

Learning About the Land

People learn by doing, participating, and observing: "We don't tell something unless it's happening". There are many teachers, usually one's closest relatives -- parents, grandparents, uncles, and aunts. Learning about the land is learning how to live.

How to live means taking care of yourself and your family by earning a livelihood and doing what is good for you and avoiding what is wrong and harmful. Livelihood to all but the youngest people is livestock, farming, weaving, cooking and housework. Children and grandchildren are told to get up early, work hard, and learn to do things for themselves: "...I tell them they (are) going to have to do it on their own, nobody is going to do it for them...and be up early at dawn...".

How to live means praying to and giving thanks for what gives us life: mother earth, the wind, the sun, fire, air, and water. Each has gods or Holy People. There are prayers, songs, and offerings at special places --like springs, shrines, flat areas, young trees, and

(Continuation of text on Page 10)

Lydia Watchman

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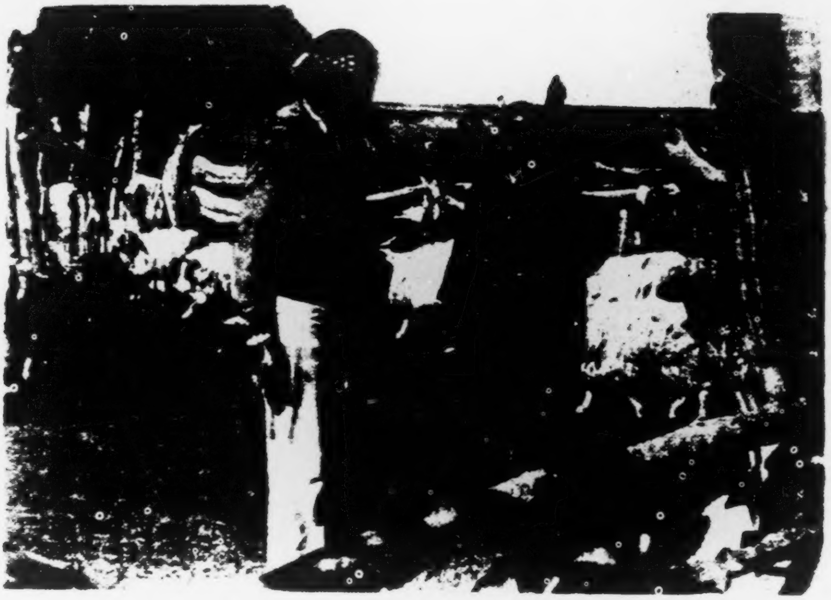

"When I was a boy my parents, my grandparents, my aunts, my uncles would tell me of life. Life is where the sheeps are. It will be up to me to tend them, and through that I could get what I need and what I want. Then they told of a home, so I built a hogan. Then more stocks like cattle and horses. Then I needed transportation to carry things around, so I bought a wagon; Then I got a cornfield. By then I needed help so my folks suggested I get a wife and have children. That is part of life. All this made me think of the land, water, and grazing for livestock. I needed all that to survive. Then besides that there are offerings needed along the way. There are songs and prayers needed to help me along, so they taught me some songs and I learned prayers. I learned of sacred places where I go to and make my offerings and give my thanks. Up to this day it has helped me this far. I still am living that life. The land, the grasses, waters, what the sheep needs, and through that I get what I need by selling them. We're used to this land we're living at. I am. My folks have told me that the land is where all my memories are, and where my children, my grandchildren will carry on. And we know the land, we know the sacred places, we know where all the waters are, and the land knows us. And so will my children. We will know it and the land knows us."

Diné Yázhí, Age 59
February 16, 1981
Joann Roan, interpreter

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at home -- for well-being and protection and blessings received that must be learned. Children come to understand more deeply through ceremonies that are given for them. Some become medicine men or women and help their people in that way, others' lives are simply enriched and given meaning.

There is a strong obligation to pass the lessons of how to live on to your children and grandchildren, because of your responsiblity as a parent and a grandparent, and out of respect for your parents and grandparents.

Now, children and grandchildren are at school, usually far away from home. Before stock reduction, parents and grandparents sold lambs and wool to buy school clothes and supplies for the children. "Every year we do the same thing for them so they keep on thinking they have something for themselves and they own something. That is the way it was, but now there's hardly anything. We have only one horse left". Children and grandchildren return on weekends and during holidays. When they are home, they participate in the traditional way of life and worship.

> "I still talk to my grandchildren. It's different now that they have to go to school. I looked at them now and they are still living a good life and they are happy, maybe because they are still here with me. I still tell them. This is my granddaughter (the one that is staying with her). I am getting old. She will have to continue carrying on the tradition of what I taught her and make our place a strong place to live here".

Sacred Places

The concept of a place that is hallowed or holy from its associations may be expressed several ways in the Navajo language. For example: dahodísin (they consider it holy); hodiyingo haz'ą́ (a place that is holy); hodiyingo baa ntsáhakees (a place considered to be holy); and ayeel al'į́įgi (where offering is made habitually)(Irvy W. Goossen, personal communication) . All the land within the four sacred mountains is hallowed land, of course. And, "Around here (Big Mountain) we always remember our mountains --the four different directions". However, the relationship between land and religion at Big Mountain also has a local and regional dimension that is part of the uniqueness of the area.

Sacred place is commonly expressed as a place of offering in the Big Mountain community. A place is sacred because it is possible to communicate there with the Holy People through prayer and offering. The Holy People cannot be seen, but their presence is known through air movements and vibrations, a certain kind of light, pictographs, noises, some kinds of ruins, and through legends. Winds, níłch'i (which also may be translated as air or spirit), carry the prayers and offerings to the Holy People; thus, winds provide access to power and assistance.

There are several consistent qualitative associations, such as kinds of places, atmospheric conditions, or times, that provide needed access to the Holy People. For example: the early morning hours are thought by some people to be a time when the Holy People are around to be petitioned. Mountains, watercourses, springs, hills, flat areas, at young trees, at lightning-struck trees, and at home are common places where offerings and prayers are made. There are also several "shrines". Some of these places are used by local families on a regular basis, and some of the same places are used regionally. We were told that the families living close to a sacred place have first priority.

If you know the appropriate prayers and offerings, you may make them yourself. Otherwise, a medicine man may make them for you or with you. Offerings are usually jewels such as chips of white shell, turquoise, abalone, and obsidian, and pollen or corn meal. The kind of offering, prayer, and ritual depends upon the purpose. If a person has bad dreams or there are bad omens, they may be interpreted by a hand trembler who will direct the person to use a certain sacred place with a medicine man. Also blessings are asked for and thanks given at sacred places. Blessings are asked for long journeys, soldiers going into the armed services, livestock, rain, grass and crops, and health well-being and protection. Families have songs, prayers, offering, and legends that are passed down from generation to generation. When they are passed on the obligation to keep them up is passed along too. "If we don't do that; if we don't carry on these rituals for protection, I know for myself that I am usually sick. P.H.S. hospital does not know what is wrong with me. If I go and offer my prayers, then my mind is clear and I feel better after that, and I go on raising my family".

There are some places, usually those used regionally, that are "most respected". Two of these that we have knowledge of are Big Mountain itself and Red Willow Spring, a few miles from Big Mountain to the northwest.

Big Mountain is said to be in the shape of a person or head. "That's the way it is, so we pray to it. Inside, it has breath (air). It breathes, so we pray to it. Its name is Be'goochídí Hastiin. He is the one that created man. The air in the mountain knows each and every one of us. He knows all that we carry, all that we do and all that we have. That is why we have to sacrifice some of what we have to it; like cows, horses, sheep. That's the way the stories have always been told".

On Big Mountain there are two shrines; one is for livestock and one is for gambling and magic. You have to go with one or the other. The grandfathers of the people at Big Mountain stayed with livestock.

In the beginning of the universe, the Holy People set one hill aside for livestock. There used to be a sea then that covered the area except for high ridges and mountaintops. At that time, the Wind People put the shrine at Big Mountain and said: "that's where you will make your sacrifice"; "there are going to be people here". After the sea was drained out the Colorado River, squirrels and birds planted trees here and elsewhere. The shrine still exists today -- we visited it. It is a circle of rock slabs placed horizontally with a doorway to the east and a "fireplace" in the middle where offerings are placed.

The shrine is the place of Be'goochídí who has four colors just like the four sacred mountains. Be'goochídí is a wind -- a man and a woman -- that came down there. And, Talking God is the caretaker for the Holy People that dwell at Big Mountain.

Be'goochídí is an extremely important Holy Person, mentioned frequently in the literature of Navajo religion (see Wood and Vannette 1979), most often in a creative role. And, the identification of Big

Mountain as "...like the Wind of the Holy People" is highly significant. According to McNeley, "...the Navajo concept of níłch'i, "wind", is the primary intellectual instrument by means of which life, behavior and other events in the Navajo universe are explained and integrated into a consistent system of thought (1975:iii)". The winds, the Be'goochídí's in this case, carry the prayers and offerings on. The winds there know everything that goes on, as cited previously, and they presumably can carry that on too.

As far as anyone knows, the first use of the wind shrine goes back at least four or five generations. "After coming back from Fort Sumner, these elders go over there to offer prayer for their own family. From all areas they would come and then they would go back and ask blessing for their family, whatever few families they had, and whatever sheep the government gave them.... Those prayers were answered." The first people to go up there were special people, like "chief priests", who had to observe special behaviors so they could communicate with the Holy People. "The other tribe (Hopi), they don't have a prayer over there like the way we understand the prayers that we had that is passed down to us. We asked them, but they said they can't go over there".

Several people from the Big Mountain community know the ceremonies that are held there, and many people we talked to had had a ceremony given for them at the shrine: two people briefly described the ceremony they had there. People from Piñon, Black Mesa, and Forest Lake also use the shrine on a timely basis, every two or four years. One can pray, too, in arroyos where soil from the mountain washes down since the "...same prayer goes up to the mountain".

Red Willow Spring is another place of great significance in the Big Mountain area (although for reasons to be discussed later on, some of its significance is lost). There was, in addition to the pool of water: a place with light from a hole in the rock where vibrations of air blew out; another place for offering communication between the earth and subsurface because air came through the rock; a "little house" in the cliff with a path to it ("Grandfather knew Holy People dwelled there because of the path"); and pictographs and hand prints. There is still a pictograph of a yé'ii (Holy Person) on the wall of the spring, where a long time ago a yeibicheii ceremony was given and the yé'ii went into the rock. There are several major ceremonies that pertain to the area. During the yeibicheii, medicine men from the region came to get water at the spring and to perform [illegible] healing ritual before ending the sacred dance. Blessingway and a rain ceremony were held here, and special offerings were made to help people regain their hearing and eyesight.

Burial Grounds

Most families' roots in the Big Mountain area go back at least four generations. The parents, grandparents, and greatgrandparents who taught their children and grandchildren how to live and passed on the responsibility for the care of the land, "...are put back into the earth."

There are family burial grounds in the family grazing areas. "It's part of the sacredness we have here". In one family: "We have a memorial day in the Anglo way. We go over there and see them with flowers".

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"The rain, it represents the people that are already gone beyond. When it is raining, then they are here".

Plants and Other Important Resources

In discussions with Big Mountain residents about the importance of the area, the most common topic of conversation concerns the tremendous variety of useful plants or herbs that grow on the mountain, from bottom to top. "It (Big Mountain) it well-known from all areas because of the herbs that are collected there by the people." Some plants, such as the one used to make ceremonial baskets, are said to grow better at Big Mountain.

We do not know how many different plants are known and used at Big Mountain, but they must number in the hundreds, and many plants have multiple uses. For convenience, plant uses may be grouped into three rough categories: practical, pharmaceutical, and ceremonial. Practical uses include use as food, tools, and fuel. Pharmaceutical uses center on collecting and processing plants for accidental injuries, sores, post-childbirth healing, colds, stomach upsets, and the like. Some medicines of this sort are collected for animals. Plant medicines are gathered at Big Mountain for ceremonial healing for most major Navajo ceremonies. The following were specifically mentioned: Arrowway, Antway, Holyway, Featherway, Nightway, Beadway, Eagleway, and Blessingway. The ingredients for "bitter medicine" are gathered there for use against witchcraft.

When plants are collected for medicine (pharmaceutical and ceremonial), they must be collected in a special way . You call the name of the plant, offer it corn pollen, and tell it why you came; for example, "a person is sick". You tell the plant about the person you want to get well, and pray to it. You do not pick the plant you pray to; you have to pick another one. The prayer is the same for all plants; only the plant name, purpose, and person differ. The prayer itself invokes the power of plants and recites their origin legend.

Anyone who knows the uses, legends, and prayers for plants may use them. There are many people in the community with this knowledge. The plant medicines are not kept in medicine kits or "carried around", with a few exceptions. When a person is sick and the cause is known, the plant or plants are collected then, for that specific person and purpose.

There are other important resources in the Big Mountain area. Deer are used for food, and their skins, when prepared in a special way, are used in ceremonies. There are eagle nesting sites near Big Mountain. Eagle feathers are used in ceremonies, and for certain kinds of healing, the claws, bones, and meat of the eagle are necessary . Sand powdered from sandstone struck by lightning at Big Mountain is used against witchcraft and put in the shoes for protection. For the traditional Navajo way of life, Big Mountain is an especially favorable place.

Effects of the Land Dispute

Specific cultural products and processes may be "...seen as coping mechanisms developed over time by a group of people living together...", according to Dorothea C. Leighton, a physician and social scientist with much cross-cultural experience, including work

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with the Navajo (1978:33). All people strive to meet several kinds of needs: physical, psychological, and sociocultural. Physical and psychological needs are clear enough, but sociocultural needs require further elaboration:

> "Three such needs have been identified as fundamental: (1) orientation of the person regarding his position in the group and the positions of others; (2) a secure membership in a definite human group; and (3) recognition of and subscription to a set of values which will serve as guidelines and will inform the individual if he is doing the 'right' thing (Leighton 1978:34).

In other words, sociocultural needs are needs for a social and cultural identity. Big Mountain people still have a strong sense of identity as traditional Navajos, which is one of the unique characteristics of the area. That identity, as we have seen, is expressed in the interrelationships among land and religion or life. Above all, Big Mountain people are concerned about what relocation will do to their way of life. Ashiiké Bitsi put it this way:

> "I have a lot of grandchildren.... I just don't know how they are going to live if we ever move away from here. This is our identity. My grandfather and my father says not to lose your identity. Maybe some other areas where relocation is taking place, maybe people do not have this kind of teaching, that they are willing to go and start a new life over again somewhere else. Here we cannot make ourselves do that. Many times we say these things to people who come to see us. Many times we say the same things to people that question us. It seems like really, anybody's really not caring what we have, what life here really means to us and what our generation holds...."

Customary ways of meeting human needs, and ways of dealing with situations when they are not met, develop in a particular society over time, Leighton says further. Slow changes are almost imperceptable and inevitable. Rapid changes can severely tax a culture's coping mechanisms, especially when there is external blockage of or interference in meeting individual needs. Leighton says that four responses to external blockage are common: 1) overcompensation; 2) substitution; 3) withdrawal; and 4)

> "..the persons may continue to strive, but may develop many different kinds of psychiatric or physical symptoms which indicate his various frustrations. He may become depressed, anxious, overactive, angry, bored, irresponsible; he may engage in acts against society such as theft, murder, destruction of property; or he may develop symptoms of physical disease.. such as asthma, peptic ulcer, high blood pressure, migraine headaches and many others (1978:35)."

The principal effect of the Land Dispute and associated legal and legislative actions thus far has been rapid external blockage of individual need satisfaction -- physical, psychological, and sociocultural -- through drastic livestock reduction, a building freeze in effect since 1972, and fencing. The level of frustration is well-documented, starting as early as 1977 (Wood, Vannette, and Andrews 1979; Topper 1980). There is some evidence that some of the traditional coping mechanisms already have been overtaxed (Topper 1980).

People at Big Mountain are striving to meet their needs, but they are very frustrated: tears were not unusual in interviews we took; the emotion expressed when prayers were offered for the Big Mountain community at the Native American Church meeting attended was truly heart-rending; open conflict within a family occured at a community meeting, an almost unheard of occurence; and there have been many deaths, recently, attributed to the effects of the land dispute. Still they are struggling to hold things together and to cope with livestock reduction, the building freeze, and fencing as best they can. In all this, their tradition of how to live --the land and its religion -- continues to give them strength, determination, and resolution.

People are now looking ahead with anxiety to what will happen in the next few months after the Hopi take over jurisdiction and begin enforcing their ordinances regulating livestock trespass and home improvements, and to what will happen with Life Estates and with involuntary relocation. They realize that these actions will destroy their source of strength, their tradition. Louise Begay Yázhí describes it well:

> "Comparing all these on my traditional side and what the relocation wants me to do, there is a big inner conflicting that's in me. But as soon as I consider myself not moving, that I'm staying, then I feel better and I am not that sick. When people want me to move, if I feel that way, then I start getting headaches and everything else besides that to take my health away.

And Tsosie Horseherder Yázhí told us: "If our life is uprooted, how do we use our philosophy for the future?...I shed tears each day when I think what's going to happen".

There are several traditional means of coping that have been or will be affected by the Land Dispute settlement provisions and by relocation. We touched upon them in earlier sections of this report.

First there is the effect on the social support system, the family and clans. The building freeze and the lack of local economic development have accentuated the trend for young and better educated people to move out of the area. Younger family members return on weekends and help out, but the continuity between generations is being broken. This break will be complete if people have to relocate, because the older generation will not be able to teach their children and grandchildren how to live on the land of their ancestors, nor will they themselves know how to live on new lands. There are other, related problems. For instance, one woman is upset because her son-in-law has to share her home , contrary to Navajo custom, because of the building freeze.

People are tied to the land as soon as their umbilical cords are offered to young trees after birth. They have a caretaking responsibility for the land, out of respect for and responsiblity to their forefathers and the Holy People. Sacred places are part of that responsibility:

> "We are not leaving the area. The places were handed down from my mother and father. They told me to use it. They told me how to live on that land. If we don't pray there, if that prayer is not offered and we relocate and are no longer there, the Holy People might think humans are no longer in existence and that may bring the future evolution to another time. I don't want this evolution to occur that soon. I want my children to live and my grandchildren to live"

In an earlier study at Big Mountain, Wood and Vannette (1979:23-24) stated that:

> "The relationship among occupancy, land use, and sacred places at the local level may be seen in several ways. First, ritual at sacred places may define traditional land use boundaries for the kin-territorial units we have postulated for the Big Mountain area. The boundaries appear to have meaning for use-rights as well as for 'protection'; protection in terms of Reichard's idea of a protective line established by ritual beyond which the unknown and potentially dangerous may lie. Seen in this way, one's ancestors could be thought of as having 'secured' the land through the proper prayers and offerings. To leave the land might be potentially dangerous, and it might be a violation of the stewardship and reciprocity with the Holy People".

We found further support for this interpretation, illustrated, for example, in the previous and following quotations from Big Mountain residents:

> "If we move -- suppose we make up our mind that we are going to relocate. We are not familiar with many places, we are not familiar with many areas. Because we have never been there, there might be a place where people are not supposed to go that is for something else, and we might be living there. Or maybe we might go to a spring where our people were forbidden. And here we thought it was a good place and we go there and we conflict with the Holy People that protect those areas. This we could not know because our grandfathers and our mothers and fathers did not tell us, because we never knew that things like this relocation would ever take place. With those things in mind, and with those rituals that we do every spring and when there is no rain, then we do not consider ourselves leaving the area and going to the unknown."

At another, highly significant, level, the power and protection of the "Wind of the Holy People", Big Mountain would be lost to the Big Mountain people if they were no longer resident there.

Red Willow Spring is already virtually destroyed as a sacred place by actions set in motion by Land Dispute legislation. Recently, several bulldozers dragging chains for land clearing operations set in motion forces that caused the collapse of most of the wall of the cave at Red Willow Spring. People can no longer use it in the traditional way.

People are concerned about what will happen to their use of plants if relocation takes place. Such a variety of plants will be difficult to find elsewhere. More importantly, they need to be close to the plants, for emergencies and since they have to collect them for a special patient and a special purpose.

"What will be done with our burial grounds?", people say. "Our roots are buried into the earth. When we move no one wants to move our roots -- no one wants to do it".

Life Estates were proposed and enacted with the intention of easing the effects of relocation on the elderly. Big Mountain residents were given preference in the enactment. But people at Big Mountain are concerned that they will be fenced off from their sacred places and their plant collecting areas with Life Estates, and since the Hopi do not believe in the same way, they say, they are worried that they will be denied access or have to pay. They are also worried because their children and grandchildren will only be able to spend a set amount of time with them, and they need their children's and grandchildren's support and affection to survive.

It would be impossible, obviously, to reproduce the Big Mountain area its people anywhere, or for it to be the same when cut up into Life Estates under Hopi jurisdiction.

Legal and Legislative Issues

Although the Navajo and Hopi land dispute seems to have been finally laid to rest, at least on paper, for over thousands of Navajos and several Hopi families the problem of relocating has just begun. For the Navajos residing in the Big Mountain area, the reality of relocation has come as a shock. Since the passage of PL 93-531, they have consistently refused to leave their sacred mountain, springs, and plants, and to move to some other area on or off the Reservation. No amount of government funding can induce them to give up what their greatgrandfathers and, more importantly, the Holy People have entrusted to them.

Several of the Navajos interviewed stated that their grandfathers and grandmothers had been living in this area before the days of the Long Walk to Fort Sumner in 1863, or shortly thereafter, and therefore before the Executive Order of 1882 which was issued by President Chester A. Arthur giving this area of disputed land to "the Moqui, and such other Indians as the Secretary of the Interior may see fit to settle thereon" (Executive Order of December 16, 1882). Parts of Big Mountain have been occupied for over one hundred years, and for over one hundred years, these people have neither had government approval nor disapproval, nor the benefits that other Indians have been entitled.

The fact that the Navajos' and Hopis' way of life could be threatened by living in the 1882 Reservation was not apparent until the landmark court decision of Healing v. Jones heard by the District Court in Prescott, Arizona in 1960. Both the Navajo and Hopi Tribes, through an Act of Congress in 1958, were permitted to go to court to seek ownership rights over the disputed land. During the court proceedings, both the Navajo and Hopi tribes alleged that they were entitled to exclusive use of the 1882 Reservation. The 1958 Congressional Act had given the Court the responsibility of deciding title. The opinion of the Court held that District 6 was to be classified as exclusively Hopi and "As to the remainder of the reservation, the Hopi and Navajo Indian Tribes have joint, undivided, and equal interests as to the surface and sub-surface including all resources appertaining thereto, subject to the trust title of the United States" (U. S. District Court 1962:102). In essence, the Court threw the responsibility of deciding exclusive rights back to Congress.

This area was henceforth referred to as the Joint Use Area, which encompassed close to 1,822,082 acres and is occupied by more than 6,000 Navajos and several Hopi families (Scudder 1979:iv). In 1972 the Ninth Circuit Court ruled that the Navajo in the JUA reduce their livestock holdings, according to Bureau of Indian Affairs officials, by 90 percent (Kammer 1980:84). A freeze was also placed on any new construction in the area.

The effects of these rulings on the people of Big Mountain, and the Navajos in general, have been detrimental. With the freeze on construction, no new homes were allowed to be built for the growing number of young adults who wanted to remain on the land that they consider as their birthright. The drastic reduction of livestock also cut into people's income.

The final blow to the people of Big Mountain, and to other Navajos residing in the Joint Use Area, was the passage of Public Law 93-531 by Congress in 1974 which returned to the District Court the responsibility and the authority to partition the remainder of the 1882 Reservation. On February 10, 1977, the Joint Use Area became obsolete. As a result of this division, the people of Big Mountain were contacted and told that their land, which the Holy People and their grandmothers and grandfathers had passed on to them , now belonged to the Hopi Tribe and Hopi livestock. Navajo livestock reduction continued along with the freeze on new construction for the Navajos living on the Hopi side of the partition. In 1980, Public Law 96-305 was passed through Congress which allowed the Navajo Tribe to purchase up to 150,000 acres of land to settle the relocatees. To this date, no land has been made available, so people are being directed by the Relocation Commission to settle in urban areas near the Reservation; into an environment in which they are totally unfamiliar as residents.

Assuredly Congress must have foreseen the mechanical problems involved when it passed PL 93-531. It delineated the responsibility of the drawing of the partition line to the Courts and appropriated monies for a Relocation Commission whose responsiblity was to handle the actual relocation process. What Congress did not anticipate was that by forcing the people of Big Mountain to leave their land, they were also forcing them to leave behind their religion.

In 1978, several residents from Big Mountain traveled to Washington to participate in the "Longest March" concerning Indian rights. They invited Senator Goldwater to visit them and discuss with them the hardships of relocation. Senator Goldwater did visit them later that same month and pledged that he would help them. Several people that we interviewed mentioned Senator Goldwater's appearance, but they were unsure of what, if any, changes in relocation policies had taken place as a result of his visit.

One major change that has occured since the passage of PL 93-531 is the Life Estates amendment (a provision of PL 96-305). This amendment would, in essense, allow a proscribed number of older, disabled Navajos to remain in the Former Joint Use Area until they die. In the Navajo language, Life Estates has to be translated as Death Estates, which is actually a more accurate description.

The concept of Life Estates seems to be an inadequate answer to relocation. It is also incompatable with Navajo social organization. An earlier study of the impacts of relocation on residents of the Former Joint Use Area found, with regard to Life Estates:

> "The major problem here is the extent to which life estates will sever the generations and isolate older Navajos from the kinship networks and children on which they have become increasingly dependent as they age (Scudder 1979:123).

The report goes on to state that the best solution would be to repeal PL 93-531 "(coupled with a major land acquisition and development program for the Hopi)" (Scudder 1979:123). We strongly agree that this solution would be suitable to all concerned.

The passage of Pl 93-531 has placed unending hardships on the Navajos of Big Mountain, both physically and psychologically. If the blame for such events is to be placed on any shoulders then it must be placed on our government's one hundred years of inactivity, misconceptions, and varied interests in the area. The recent responsiblity of relocation which was placed on the Courts by Congressional Act acknowleged too late that something should have been done earlier.

Governmental action has also infringed upon peoples' free exercise of religion as it is stated in the First Amendment. Big Mountain is considered sacred among the Navajo who live in and around this area: there are sacred shrines on it, origin myths about it, and frequent visits made to it. It is a focal point and a reminder to the Navajos of the Holy People who set this area aside for them. The importance of Big Mountain to the residents of this area is comparable to the importance that is placed by both the Hopi and Navajo on the San Francisco Peaks located north of Flagstaff, Arizona. Both Mountains are considered sacred and carry within them a powerful healing potential. As Feeny pointed out in his research on the San Francisco Peaks:

> "the San Francisco Peaks is just such a holy and living deity to the Navajo people which by virtue of its sacred animation serves as a powerful, life-sustaining force directly influencing, guiding and harmonizing the intellectual, emotional and spiritual beings of the Navajo peoples (Feeney 1979:11).

This same notion can be applied to Big Mountain and its relationships with people in that area. Without Big Mountain and its encompassing shrine, springs and other places of offering and prayer, and plants, the Navajo people would be unable to heal themselves when ill, or celebrate when things go well. These beliefs and practices are part of a Bona Fide Navajo religious faith and tradition and cannot be separated or taken away from the people according to the Free Exercise of Religion Clause of the First Amendment.

On December 15, 1977, Senator Abourezk introduced Senate Resolution 102 which eventually became Public Law 95-341, or the American Indian Religous Freedom Act. It states, in part:

> "That henceforth it shall be the policy of the United States to protect and preserve for American Indians, their inherent right of

> freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

The law also states that:

> "The President shall direct the various Federal Departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices..."

As a result, a Task Force Report was submitted in August 1979. In Appendix C there is reference to a letter written by John J. Wood and a paper by Wood and W. M. Vannette entitled "A Preliminary Assessment of the Significance of Navajo Sacred Places in the Vicinity of Big Mountain, Arizona". This seems to be the only reference to relocation and its indirect prohibition of the right to religious freedom. As stated previously, land and religion are synonymous to the Navajo People. To move people from their land is also moving them away from their everyday religious beliefs and practices. Public Law 95-341 acknowledges our government's lack of understanding when it states:

> "Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws..."

Or as Representative Morris Udall consented in his statement on the American Indian Religious Freedom act:

> "The traditional religions of the Native American people are not our religions and we are unaware of practices, rites, and ceremonials of these religions. We have, in the past, enacted legislation where we have unknowingly brought about the infringement of the religious rights of the Indians... It is the intent of this bill to insure that the basic right of the Indian People to exercise their traditional religious practices is not infringed without a clear decision on the part of the Congress or the administrators that such religious practices must yield to some higher consideration (Udall 1978:H6842).

What higher considerations could possibly prohibit a peoples' right to worship their deities? Is relocating Navajos, particularly in the Big Mountain Area where we have gathered statements of long-time occupancy and religious use of the land, for the purposes of cattle grazing and mining a higher consideration?

Public Law 95-341 admits that the government is dealing unknowingly with the lives of Native Americans. The legislative history which brought about PL 93-531 also suggests that Congress lacked the knowledge of how to approach this land dispute and therefore wasted years in and out of Court deciding what to do. Is there any substantial evidence that moving thousands of Navajos away from their homes is not also an act of misunderstanding?

Several authorities including lawyers, anthropologists, social service and mental health providers, and members of the Relocation Commission who have dealt with the relocatees on a regular basis affirm that relocation is detrimental; yet Congress and the Courts proceed to expedite partition and relocation at the same time saying that the Native Americans' inherent rights of "freedom to believe, express, and exercise the traditional religions" will be protected and preserved by the United States.

Summary and Recommendations

Big Mountain people are unique in the strength of their religion, which is their land, life, and well-being. For traditional people such as these, forced relocation will be cataclysmic: it will take away their only means of coping, their reason for being, by blocking the expression of their religious beliefs and practices. The Big Mountain area cannot be reproduced. Its qualitative associations of light, sound, wind, legend, history, plants, place, and people are just not the same anywhere else.

Relocation or any other disturbance of the land and its people, would be a violation of Big Mountain peoples' constitutional rights under the Free Exercise of Religion Clause of the First Amendment, and a blatant disregard of the intent of the American Indian Religious Freedom Act. Consequently, we respectively recommend to the Congress of the United States of America that the Big Mountain area be set aside as a sacred area in perpetuity, not to be disturbed by relocating its residents or their descendents, or by mining or such other activities which the residents may determine to be detrimental to the land and their well-being.

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Appendix I: Method

Most of the reported data were gathered during six weekends spent as guests of the Big Mountain community, between January 18 and March 15, 1981. Some interviews and observations taken by Wood and Vannette (1979) in December 1978 and January 1979 are used as supplements.

On January 17, 1981, we explained our purpose and plan in a community meeting. The following weekends were spent interviewing in homes, at sacred places, and in the community hogan. Our involvement in the community was fairly high. Our base of operations was the Big Mountain community hogan. We shared many of our meals with residents, visited socially, and J. Wood participated in a meeting of the Native American Church.

Because of the nature of the subject we were researching and because of time constraints, we chose to proceed with a minimum of structure. A list of questions was prepared as an interview guide (Appendix II). Interviews were taken mostly in Navajo, with the help of interpreters from the community (Annie L. Homes, Joann Roan, and Sally Tsosie), and taped. We attempted to talk to as many different knowledgeable persons from as many different families as we could. In all, twenty five persons were interviewed or contributed information (Appendix III), and everyone was cooperative and helpful. We believe that the data represent the thoughts, knowledge, and feelings of the community.

Wood, Stemmler, and Wood donated their time and expenses to the project, except for transportation, which was provided by the Department of Anthropology, Northern Arizona University.

Appendix II: Interview guide

Big Mountain Project
Initial questions
John J. Wood
23/81

A. How does a boy or girl learn his or her feeling about the land?

B. Teach me about this land and what it means to you like you teach your children or grandchildren.

C. Teach me the meaning of sacred places or shrines. What kinds are there? What are their names?

D. Questions about specific shrines:

1. What is place called? Are their other names?
2. How did it get its name(s)?
3. What do people do there?
4. Are there stories about this place? Do you know them, and would you tell them to me?
5. Are prayers or offerings made there? Do you know them, and would you tell them to me? Who makes offerings and prayers there, and for what purposes?
6. Is this place the place of any holy people? If so which ones?
7. Have you or has anyone you know had a ceremony over you there? If so, when and what one?
8. Are plants, herbs, minerals, waters or other things collected there? For what purposes? Is there a certain time of year and certain way that they are collected? Can these things be collected other places for these uses. Why or why not?
9. When is the place used? Who uses it? Is this person a singer, hand shaker, or what? What ceremonies do they know? Are people from Big Mountain or somewhere else?
10. When was this place last used, and who used it?
11. Do people who use this place also use other places for the same purposes outside of this area?
12. Does everyone, young and old, respect this place?
13. Are there others who have knowledge of this place? What are their names?

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Appendix III: Persons from whom information was received

Daniel Ashiiké
Violet Ashiiké
Larry Beck
Victor Beck
Asdzą́ą́ Yázhí Bedoni
Chísí Nez Begay
Effie Begay
Joe Benally
Jane Biakeddy
Ruby Biakeddy
Slim Biakeddy
Ashiiké Bitsi
Annie L. Homes
Rose Manygoats
Bessie Pahi
Joann Roan
Katherine Smith
Sally Tsosie
Lydia Watchman
Diné Yázhí
Louise Begay Yázhí
Tsosie Horseherder Yázhí
Jimmy Ze[illegible]
Rebecca Zée

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Jess Cooper
Executive Vice President
and General Manager

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1860 Lincoln Street, Suite 404 • Denver, Colorado 80295
303/860-0099

June 16, 1988

The Honorable Daniel J. Evans
United States Senate
SH-324, Hart Senate Office Building
Washington, DC 20510-4702

Dear Senator Evans:

I am writing on behalf of the Rocky Mountain Oil & Gas Association (RMOGA) in opposition to S. 2250, the Indian Religious Claims bill introduced by Senator Alan Cranston. RMOGA is a trade association which represents hundreds of members who account for more than 90% of the oil and gas exploration, production and transportation activity in the Rocky Mountain West.

This legislation, designed "to ensure that Federal lands are managed in a manner that does not impair the exercise of traditional American Indian religion", could have a deleterious effect on multiple use management of the nation's public lands. While we are certainly not opposed to the exercise of religious freedom in any way, we are concerned with the potential far-reaching, open-ended ramifications of this bill. We are concerned that, from an oil and gas standpoint, S. 2250 could jeopardize access for exploration and production activities on a sizeable percentage of lands in the Rocky Mountain region. By prohibiting any activities which would interfere with traditional Indian religious practices, the bill provides Indians with a veto over any activities which could be interpreted as interference. Virtually all public land was Indian land at one time, and because these religions are based on land and nature, and involve countless sacred sites, mostly unidentified and unknown to the public, the impact of this measure could be substantial.

There is already ample provision for the consideration of Indian religious rights and needs through the American Indian Religious Freedom Act of 1979. Indians, like all members of the public, also share an opportunity to comment on and influence land management decisions through formal and informal planning processes utilized by surface management agencies. This legislation would grant to American Indians exclusive rights of the use of certain public lands, making the religious use of federal lands the primary use of those lands, and subjugating other multiple uses, to the extent they do not interfere with religious use.

June 16, 1988

The Honorable Daniel J. Evans
United States Senate

page two

We are extremely concerned about the potential impact S. 2250 would have on the nation's public lands in general, and on multiple use management of those lands in particular. We request your consideration of these views and strongly urge the Committee not to advance this bill without further hearings in the field. The witness list at the hearing on May 18th was strictly limited, and there are many representative viewpoints that the Committee did not have the benefit of hearing. In addition, we strongly urge the Committee to investigate and inventory the location and number of Indian religious sites throughout the West to ascertain the nature and extent of the lands involved.

Thank you for your consideration of our views. We ask that this letter be made part of the hearing record on S. 2250.

Sincerely,

Jess Cooper

AFB:cw

SOCIETY FOR AMERICAN ARCHAEOLOGY

Office of Government Relations
Foresight Science & Technology, Inc., 2000 P Street, N.W., Suite 305,
Washington, D.C. 20036, (202) 833-2322

June 9, 1988

The Honorable Daniel K. Inouye
Chairman
Senate Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, DC 20510

Dear Senator Inouye:

The Society for American Archaeology (SAA) appreciates the opportunity to offer comments on S. 2250, to amend the American Indian Religious Freedom Act. Please include these comments in the hearing record on the legislation.

The Society is an international scholarly and professional association comprised of both professional and avocational archaeologists concerned about the discovery, interpretation and protection of the archaeological heritage of America. As such the SAA has had a long relationship with the Department of the Interior and other federal land managing agencies to help preserve and promote the nation's cultural and natural resources. Much of this cultural heritage is directly related to Native Americans.

The SAA applauds the intent of the legislation. We support the conservation of cultural resources. But we have many concerns with the language in the amendment. We feel that the language is too vague and would be difficult to implement. It poses conflicts between intent of the bill and the reality of managing archaeological and other resources.

Members of the Society have worked with Native Americans over many years on various subjects. Archaeologists are all anthropologists. As anthropologists we recognize the need for cultural sensitivity to different approaches to life and beliefs. These different belief systems make each group unique.

The Society for American Archaeology, therefore, appreciates the Committee's concern over upholding the rights of Native Americans to practice native traditional religions but because of the problems cited above, we cannot support the amendment.

The Society for American Archaeology would be happy to provide any additional information you might require.

Sincerely,

Loretta Neumann
Washington Representative

NATIVE AMERICAN SUPPORT GROUP

May 20th, 1988

To: The Senate Select Committee On Indian Affairs

Re: Amendments To The American Indian Religious Freedom Act

Honorable Members of the Committee:

I am writing to you in regard to your current deliberations on the fate of PL 95-341, 92 Stat. 469, 42 U.S.C. Sec. 1996, The American Indian Religious Freedom Act. I view your work, at this moment, as having a particular urgency and poignency due to the gravely insensitive and mistaken Supreme Court decision in Lyng, et al. v. The Northwest Indian Protective Association, et al. The construction of the Gasquet-Orleans Road will not only intrude upon and interfere with the spiritual practices and beliefs of the Yurok, Karuk and Tolowa peoples, but also, the reversal of the lower court decisions in this case paves the way for a devastating disruption and violation of the religious practices and cultural integrity of indigenous peoples throughout the U.S. Without some prompt legislative remedy, this Supreme Court decision may even be used to consign the American Indian Religious Freedom Act to virtual oblivion.

While considering amendments such as Senator Cranston's bill S. 2250, I urge that the Committee develop language for a fourth, fifth and sixth section to assist in clarifying 3 distinct areas: application of the law to sacred sites and objects held by private parties, elaboration of the law sufficient to include other aspects of the Native American religious experience, and a strengthening of the law's enforcement powers to include

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criminal penalties and fines.

Let me offer four examples which illustrate the first proposition. In South Dakota, Honeywell Corporation purchased Hell's Canyon in the Black Hills for use as a weapons testing range, even though it held petroglyphs of sacred importance to the Lakota people. On the Slack farm in western Kentucky, grave robbers leased farm land from its owner and looted a large burial mound, disrupting the remains of over 1,200 indians -- the largest desecration in modern history. Shawnee and other descendants of the Mississippian cultures deserve to have this area protected as a heritage site and to have access to this portion of the farmer's private property for ceremonial use. In California, over 100,000 indians are buried in mass graves beside the 22 Franciscan missions which had been established (including Fort Yuma). Though 2 are maintained by the State Parks system, the remainder are currently administered by the Catholic dioceses. Some of these graves are openly acknowledged, such as in San Juan Batista, others are ignored, such as in Santa Clara, and at some there existence is denied, such as here in Santa Cruz. The living descendants of these California indian people deserve to have these sites acknowledged as Native American heritage sites and to have unimpeded access to these grave sites for visits and ceremonies which honor their departed forebearers. In all three of these instances, no proprietary or beneficial interest would be asserted or claimed, other than that the prerogative of traditional American Indian religious practices takes precedence over the absolute property rights of the landowner. Land management issues, whether harvesting lumber, building roads, herding cattle or planting crops, should not override the 1st Amendment guarantees elaborated in the American Indian Religious Freedom Act. This is a principle which ought to be sustained whether the landowner is a private party or a public agency. And furthermore, this principle ought to be protected in cases regarding sacred objects as well. Government institutions, schools and museums, merchants and traders, and private parties who've somehow obtained sacred objects such as burial urns, prayer fans, sacred pipes, talismans, ceremonial garments, etc. ought to be compelled to return these objects to the living descendants of their original owners for proper disposition. This should include the repatriation of those burial remains and skeletons which are being stored or displayed for "scientific" purposes.

As to the second proposition, 10 years of frustration in various attempts to apply the Religious Freedom Act seem to indicate that some greater specificity is desired within the language of the law. 15,000 Navajo in and around Big Mountain in northeastern Arizona have obtained no protection or judicial relief from the courts against their forced relocation, in spite of the destructive effects of this Federal policy on their lives and religious practices. Over 30% of the Navajo elders who've been relocated have died, suffering from a fatal lonliness and despair. Some other instances which deserve to be defended include the gathering of herbs, plants and other natural objects such as feathers and claws, the preservation of cultural artifacts and archaeological sites, the protection of the lives and habitats of certain revered natural creatures such as the eagle, condor, raven, bear, elk, salmon, whale, etc., the facilitation of ceremonies within penal institutions, and the accessibility for inmates in solitary confinement or death row to sacred objects and rituals or to visits by medicine people. Perhaps a phrase in this section could simply state that Indian spiritual leaders and those with the authority to conduct certain ceremonies shall be acknowledged to have the same status or parity with the clerics of other religious faiths. Medicine people deserve to be accorded the same respect before the law as priests, rabbis, etc.

Also, environmental polution and ecological degradation are religious issues to many traditional indian people, not just because of its effects on the earth, but because the health of future generations is no less sacred than the remains of past generations. The defense of the unborn and the new born against the perils of toxic chemicals and hazardous wastes in the envirnoment is a spiritual imperative. In the Laguna Pueblo of New Mexico, mothers have given birth to infants with cancer, the first documented cases in history, because of the polution caused by the Jackpile Mine owned by Anaconda. In this community, four generations of indians have cancer caused by the once largest open-pit uranium mine in the world. Though the mine is now inactive Anaconda has not reclaimed the land, and the radioactive contaminents continue to leech into the water supply.

For the third proposition, without a doubt, public officials and administrators, as well as corporations and private individuals, would be less reluctant to cooperate and comply with the expressed intent of this fundamentally important legislation, if they knew that their obstruction, evasion or inaction could expose them to fines and criminal penalties. And, since, in effect, the American Indian Religious Freedom Act is the fuller expression of a constellation of rights that are constitutionally guaranteed, policies and proceedures ought to conform with it at the state, county, and municipal levels of government, as well as within the Dept. of State. This last facet is so that the government would be encouraged to seek the return of sacred objects which have been accumulated by foreign; for instance, over the centuries, Russia has obtained many valuable objects from Californian, northwest and Alaskan native peoples.

Non-indian peoples must be made to understand that for traditional native peoples, who they are is not finished at the skin or simply contained in the individual body. Their identity continues out beyond them, traveling through their senses, intuition and dreams, into the land and air which surrounds and sustains them. When the land is disfigured, reorganized or polluted, or when they are relocated from their ancestral landscapes, it causes them emotional and psychological pain and a deep feeling of personal loss. These American Indian peoples are attached to the land as if by luminous fibers which are extended and amplified through the ritual use of sacred objects. And beyond space, the continuum of time in their religious experience is not simply of the moment structured by dogma, but, in concert with memory, ceremony, and the oral teachings of their communities, it is very extensive, blending their lifetimes with those of ancestors, living and dead, and with those many generations of the unborn yet to come.

To disrupt or sever these luminous ties with their sacred world and its physical harmony causes not only a sense of pain and dislocation, but also a deep spiritual anguish which damages the life of each individual, undermines the cohesion of families and communities, and can destroy entire cultures.

It took this Republic over 200 years to formally acknowledge the unceeded rights of the American Indians to freely practice their religions. Congress must complete the promise of this step initiated 10 years ago, by amending the American Indian Religious Freedom Act so that it may become an even more effective legal tool for insuring the protection and preservation of the spiritual life and practices of the original inhabitants of this continent.

The work of this Committee in considering S. 2250 and preparing it for presentation to the full Senate, will not only help repel the potential travesty unleashed by the Supreme Court decision in the G-O Road case, but also must insure that other indians may rely on our government's promise to respect their rights. The only honorable alternative is to refuse to allow the good will and growing trust engendered by PL 95-341 to be betrayed.

My earnest wish is for success in your endeavors.

Submitted with respect and sincerity,

John Abalone Walsh

John Abalone Walsh

Coordinator, Native American Support Group

cc: Sen. Alan Cranston

Cong. Leon Panetta